A FURTHER INQUIRY INTO THE RIGHT of APPEAL FROM THE CHANCELLOR, OR VICE CHANCELLOR, OF THE Univerſity of CAMBRIDGE, IN MATTERS of DISCIPLINE.

[Price One Shilling and Six-pence.]

A FURTHER INQUIRY INTO THE RIGHT of APPEAL FROM THE CHANCELLOR, OR VICE CHANCELLOR, OF THE Universſity of CAMBRIDGE, IN MATTERS of DISCIPLINE:

In which the OBJECTIONS of the AUTHOR of a LATE PAMPHLET, INTITLED,

The Opinion of an EMINENT LAWYER *concerning the Right of Appeal, from the Vice-Chancellor of Cambridge, to the Senate; ſupported by a ſhort hiſtorical Account of the* JURISDICTION *of the* UNIVERSITY;

Are fully obviated.

Faciunt næ intellegendo, ut nihil intellegant: — dehinc ut quieſcant porrò, moneo, & deſinant maledicere, malefacta ne noſcant ſua. TERENT.

LONDON:

Printed for J. PAYNE and J. BOUQUET, in PATER-NOSTER ROW; and for T. MERRILL, Bookſeller in CAMBRIDGE. M.DCC.LII.

A FURTHER

INQUIRY, &c.

THO' the author of the *Inquiry into the right of appeal from the chancellor or vice-chancellor of the univerſity of* Cambridge *in matters of diſcipline*, never doubted of its meeting with a candid reception from ſuch perſons, as were willing to hear what could be ſaid on both ſides, before they determined in favour of either; he was neither ſo unacquainted with the temper of the univerſity at preſent, nor the warmth of ſome particular members of it, as to expect

expect it would escape the severest examination. The event indeed has been so far different from his expectations, that much less has been said in answer to the pamphlet, and much more in abuse of the author, than either was or could be apprehended: 'but what men want in 'reason for their opinions, they usually 'supply and make up in rage.'

IGNORANT, *impudent*, *outrageously insolent*, *scribler*, *reviler*, *weak and shallow pedant*, are the courtly [a] terms, in which the *editor of the opinion of an eminent lawyer* speaks of the *author of the inquiry*; and as for the *inquiry* itself, 'tis [b] *a foolish pamphlet*, [c] *an insipid performance*, which, tho' he undertakes to answer, he confesses [d] *he had hardly patience enough to peruse*. In the last of these particulars the reader may possibly be inclined to take his word; but as to the rest, I presume he will assert the undoubted privilege which belongs to him, I mean *that* of thinking and judging for himself; and consequently, would be apt to give the same degree of credit to me, should I represent the *editor of the opinion*, as well versed in the history and antiquities of

[a] P. 3. 4. 43. 56. 48. 5.
[b] P. 5. [c] P. 6. [d] P. 5.

the

the univerſity, a perfect maſter of canon and civil law, and remarkable for the candor, civility, and good manners, with which he treats thoſe who differ from him in opinion, as he gave to him, when he ſpoke of the *inquiry* in the opprobrious terms that are mentioned above.

WHEN this point of an appeal, in matters of diſcipline, begun firſt to be canvaſſed in the univerſity, what [e] attempts were made to ſupport it by quotations from the new ſtatutes at firſt,

[e] THE claimants of an appeal in matters of diſcipline, at firſt took ſhelter under the queen's ſtatute de cauſis forenſibus; but being eaſily beaten from thence, retreated quickly into the old ſtatutes, whence they thought themſelves pretty ſecure of not being diſlodged. But finding by the *inquiry*, that this poſt was untenable alſo, the only reſource they had then left, was to retire within the ſacred pale of eccleſiaſtical juriſdiction, which they have accordingly done. And here this *tongue-doughty champion*, being accoutered by a ſage veteran with certain ruſty weapons from an old epiſcopal armory, ſallies forth upon the *inquirer*; and after belabouring him in the firſt place with four full pages of the fouleſt language he was able to rake from the very ſink of abuſe, (declaring at the ſame time, that *he took not up his opinion of the writer and his preformance upon ſlight grounds*, FOR *he had hardly patience enough to peruſe it,*) in full confidence of carrying his point, by the ſame means as ſome of his friends had formerly carried theirs, on he goes with a cry of *the church* or *its juriſdiction* at leaſt *being in danger*, if appeals were denied; tho' he is quite as ignorant of the nature of the latter, as thoſe were of the meaning of the former, who were once ſo unaccountably bewitched with its very ſound.

and from the old ones afterwards, and how clear was the evidence drawn from the latter ſaid to be in its favour? But, as the *inquiry* fully expoſed the weakneſs of that ſupport, it is no longer thought prudent to reſt the cauſe on ſo rotten a foundation; and therefore we are now told, that *the right ſtands entirely on the nature of our juriſdiction* [f]. Nay, ſo very deſirous is this *writer* to prevent the world's imagining, that it was ever put upon any other foundation, as even to affirm, that *no body, who underſtood the matter in debate, ever pretended to found the right of appeal on expreſs ſtatute* [g]; tho' many of his own friends certainly did ſo, who conſequently will not think themſelves much obliged to him for ſpeaking ſo contemptuouſly of their underſtandings; and even the *eminent lawyer*, whoſe opinion he has preſumed to publiſh, and to whoſe infinitely ſuperior underſtanding the moſt reſpectful deference was due, has done the very ſame.

But whatever the caſe was formerly, a right of appeal to the univerſity in matters of diſcipline is now reſted *entirely on the nature of our juriſdiction, a ſhort hiſtorical account of which* the *editor of the opinion*

[f] P. 38. [g] ibid.

opinion has added, by way of *ſupport* to the opinion itſelf. And indeed, as he had the ſagacity to foreſee, that the *foundation* upon which the opinion *is built* was in danger of *giving way*, he did wiſely, it muſt be confeſſed, in *erecting a buttreſs* in order to *ſupport* it. The only misfortune is, that moſt of the *materials* with which he *built* it being *very old*, and many of them very *unfit for ſuch a uſe*, this *hiſtorical buttreſs of his* is likely to be very *ſhort*, in its duration at leaſt.

He informs us, that 'the univerſity of 'Cambridge was poſſeſſed of a juriſdiction 'over it's own members, as *clerici*, many 'years before any was granted to it by 'h charter from the crown; and that this 'juriſdiction, being eccleſiaſtical, ſeems to 'have been originally derived from the 'biſhop of the dioceſe i.' But as the uni-

h Tho' the univerſity be ſuppoſed to be a corporation by preſcription, the law will preſume it to have been created by the crown, and that by charter, tho' no ſuch charter be now to be found. A corporation by preſcription may alſo be confirmed by the king's letters patents, and yet be a corporation by preſcription ſtill. It is well known, that the ancient charters and records of this univerſity were burnt by the townſmen in a riot, in the time of Richard the ſecond; ſo that the juriſdiction granted to us by our preſent charters, is very far from being the firſt we derived from the crown.

i P. 21.

verſity of Cambridge is of royal foundation, and as ſuch claimed ſo long ago as the year [k] 1381, it muſt have derived its firſt juriſdiction from the crown; it being an abſurdity not to be paralleled, that the crown ſhould found a body corporate, conſiſting of a [l] head and ſubordinate members, and

[k] A PETITION then preſented, in behalf of the univerſity, to the king in parliament, recites, cum dicta univerſitas Cantabrigiæ ſit ex *ordinatione* & *fundatione* illuſtrium progenitorum veſtrorum.

[l] UNIVERSITIES, according to Speigel and Calvin, non membris ſolum, ſed & *capite* conſtant: a particular which I the rather take notice of, as the *editor of the opinion* ſeems to have forgot, that amongſt the many things eſſential to the conſtitution of *ours*, that of a *head* or chief magiſtrate is one; tho' it happens to be ſo, both from the nature of the thing, and all our charters, ſtatutes and letters patents, and even from an act of parliament. According to him, all juriſdiction was originally veſted in the univerſity, but they not chuſing to exerciſe it in their collective capacity (p. 22.) appointed an *officer*, under the name of *chancellor*, to exerciſe it for them, who, *as official*, was accountable to them. Here then we have in the firſt place, a juriſdiction reſiding in the univerſity, conſidered as a body without a head, tho' a head be as eſſential to ſuch a body politick, as it is to the natural body itſelf; and in the next, we have this juriſdiction delegated to a particular *officer* or *ſervant*, who, tho' like many other ſervants, he governed his maſters, was in the end to be governed by them; his duty being, to *correct them* in the firſt place, and then to ſubmit to *their correction* for ſo doing. A ſcheme of diſcipline truly admirable! and which the *inventor* has been at ſo very great an *expence* of time and labour to bring to *perfection*, that I know of no method ſo proper for rewarding him, as by procuring his majeſty's *patent*, or at leaſt a *grace of the houſe*, whereby the whole benefit and advantage thereof may be confined to him and him only.

yet

yet neither preſcribe rules for the government of it, nor authorize it to preſcribe ſuch rules for itſelf. Add to this, that as it's foundation is inconteſtably much ancienter than that of the ſee, from which *this excellent chronologer*, on the authority of certain reſcripts, ſuppoſes it's juriſdiction to be derived; the ſuppoſition is abſurd and unwarrantable in every view. [m] Lord Coke could have informed him, that eccleſiaſtical juriſdiction might be derived from the crown; and therefore, tho' ſuch juriſdiction had been coeval with the univerſity itſelf, he needed not to have fetched it from the biſhop of the dioceſe.

THE *Barnwell proceſs*, to which even this author appears to be no [n] ſtranger, recites more than one old papal prohibition to all arch-biſhops and biſhops, not to extend their juriſdiction to the univerſity of Cambridge, or moleſt the chancellor, or rector as he was then called, in the exerciſe of his; and tho', in oppoſition to theſe prohibitions, the biſhops of Ely did for ſome time claim juriſdiction over the univerſity, tho' thoſe of Lincoln never had, it appears to have been in caſes merely eccleſiaſtical, and in them only by way of appeal.

[m] Reports, part 5. [n] P. 24.

peal. [*] Hugh de Balſham A. D. 1264, did indeed forbid appeals to be brought from the chancellor to him, paſſing over the univerſity; but it follows not from thence, that appeals lay in all caſes to the univerſity, and from thence to him. The reſcript mentions, that *appellants from the chancellor frequently paſſed over the appeal to the univerſity*; but is it not improbable to the laſt degree, that they would have done this in cauſes of diſcipline at leaſt? Hence it may be fairly inferred, that theſe were not the cauſes, in which appeals ought formerly, and were henceforth, to be made to the univerſity at firſt, and afterwards to the biſhop; and the rather, as Hugh de Balſham himſelf, in a latter reſcript, which he ſent to put an end to all diſputes about juriſdiction betwixt the chancellor of the univerſity and the arch-deacon of Ely, has informed us, that *matters of an eccleſiaſtical nature only* were cognizable by him upon appeals. For, after declaring that the juriſdiction of the arch-deacon was clearly diſtinct from that of the chancellor of the univerſity, as well in regard to contracts as perſons and even cauſes, and that neither of them ought to be ſubject to the other, tho' both

[*] Opinion, &c. p. 23.

both of them were in ſubjection to him; he adds, but that if the aſſiſtance of a *ſuperior* ſhould be neceſſary *in matters of an eccleſiaſtical nature*, recourſe ſhould then be had to him or *his official*.

THE reſcript of Simon de Montacute, biſhop of Ely, which bears date A. D. 1341, is either ſhamefully miſunderſtood or wilfully miſrepreſented by the *editor of the opinion* [p]. He affirms that, 'in it there is 'expreſs mention of appeals to the univer-'ſity in cauſes of both kinds,' viz. civil and criminal: and that, 'the deſign of it 'is to commiſſion the univerſity to deter-'mine *finally* in all *civil* cauſes, without a 'further appeal to his court; and to prevent 'frivolous and vexations appeals, from the 'univerſity to him in *criminal* cauſes, by 'laying the appellant under the obligation 'of an oath.' But the [q] truth is, that the former

[p] P. 24.

[q] THE true occaſion of this reſcript I take to have been this; tho' cauſes of a civil nature had been determined in the univerſity, and tho' ſuch determinations, by virtue of the privileges granted by the crown, ought to have been final, yet litigious perſons who happened to be caſt would appeal to the biſhop's court, merely to ſuſpend the effect of the judgment given againſt them. The officers of the biſhop's court, being always ready to receive appeals, immediately inhibit the academical judge *a quo*; and then, to hang up the cauſe effectually, out comes a prohibition from the temporal court, to prevent the eccleſiaſtical judge proceeding on an appeal in a matter merely civil, and conſequently

former part of this reſcript only permits the academical judge *a quo*, in caſe of an appeal to the biſhop or his *official* in a cauſe merely civil, wherein they had been ſerved with a prohibition from the crown, to proceed in the cauſe agreeably to the privileges granted by the crown to the univerſity, without waiting for any new conceſſion for that purpoſe from the biſhop or his *official*, or regarding any inhibition of theirs; which in fact the judge *a quo* might have done, and ſo the biſhop himſelf confeſſes, even without any ſuch permiſſion from him: and tho' the latter was intended to prevent frivolous and vexatious appeals, in ſuch other cauſes as no prohibition from the crown to the biſhop would

quently not cognizable by him. The academical judge *a quo*, might notwithſtanding all this have proceeded if he had pleaſed, the appeal to the biſhop's court in this caſe being abſolutely null, and conſequently the inhibition grounded thereon; but as out of reſpect to the biſhop's authority, he was unwilling to proceed accordingly, the biſhop hereby permits him to do it, without waiting for his expreſs permiſſion upon every occaſion, and without regard to the inhibition with which he happened to be ſerved. The intention therefore of the former part of the biſhop's reſcript was to prevent the academical judge's ſentence being ſuſpended, by an appeal to his court, in caſes where no ſuch appeal would properly lie; and the deſign of the latter part was, to prevent frivolous and vexatious appeals, in ſuch other caſes as were really appealable, viz. in eccleſiaſtical cauſes, by obliging the appellants to take a previous oath, agreeably to the practice of ſpiritual courts.

would lie in, (as in teſtamentary cauſes, for inſtance, and others of contentious juriſdiction in foro eccleſiaſtico,) yet even theſe were not *criminal* cauſes, as this author roundly affirms. For the words of the reſcript are, *in querela etiam querelans juramentum præſtet ante omnia, quod non malitioſè ſed propter defectum juſtitiæ ab illis a quibus juſtitia hujuſmodi petitur denegatæ, querelat*; which is evidently a deſcription of a complainant in a cauſe between two parties, and not of one aggrieved by the rigor and ſeverity of a puniſhment to which he was ſentenced; ſuch being not apt to complain of their judges, for being ſhort and deficient in point of juſtice, or for refuſing to adminiſter it.

An appeal therefore from the chancellor to the univerſity, and ſo on to the biſhop of the dioceſe, in matters of academical diſcipline, is neither warranted by theſe epiſcopal reſcripts, nor by any other authority that I can find. Hugh de Balſham declares it to lie *in iis de quibus eccleſia judicat*; but was every breach of an univerſity ſtatute a breach of a canon or eccleſiaſtical law, and as ſuch cognizable by an eccleſiaſtical judge? no perſon, I imagine, will be ſo hardy as to affirm it was; and if it was not, then, by the confeſſion of Hugh de Balſham himſelf, it came not by appeal from the chancellor to the univerſity at firſt, and afterwards to him.

THIS [1] author affirms (as indeed what is there he will not affirm) that, 'the uni-'verſity was exempted from the biſhop's 'authority, and their juriſdiction made final 'by royal charters confirmed by act of par-'liament.' And yet it appears plainly from the *Barnwell proceſs*, that this exemption was founded entirely upon papal bulls; and it is even certain, that the dependance of the univerſity upon the biſhop, being only in regard to eccleſiaſtical points, was not ſuppoſed to be at all affected by the royal charters; they rendering the juriſdiction of the univerſity final in cauſes merely temporal. If this *author* had not obſtinately ſhut his eyes againſt conviction, he could not have avoided ſeeing the fulleſt evidence of this, even in that very reſcript of Simon de Montacute, which he not only quotes, but pretends to underſtand. For, tho' it expreſsly mentions, that an independant juriſdiction in thoſe caſes, had even then been granted to the univerſity by the kings of England; it ſhews as plainly, that the biſhop ſtill thought himſelf at liberty to receive and hear appeals in ſuch other caſes, as were properly cognizable by an eccleſiaſtical judge.

IF the determination of delegates was rendered final in conſequence of this exemption, it could only be in thoſe points, in which appeals had hitherto lain from them to

[1] P. 22.

to the biſhop's court. But that matters of diſcipline were in the number of thoſe, is far from appearing from the epiſcopal reſcripts cited by this author; and is moreover highly improbable from their very nature. So that, unleſs in defiance of all reaſon we ſuppoſe, that the ſtatutes of the univerſity by which offenders were tried, were a part of the canon or eccleſiaſtical law, and the [s] puniſhments of expulſion, incarceration, &c. to which they were ſentenced, are to be found in the catalogue of eccleſiaſtical cenſures; it will be impoſſible for us to ſuppoſe, that matters of academical diſcipline were once cognizable by the biſhops of Ely, and afterwards finally determinable by delegates appointed by the univerſity.

But this [t] *author*'s principal argument is ſtill behind; and leſt it ſhould be thought to ſuffer by my repreſentation of it, I ſhall give it the reader in his own words. 'This juriſdiction' (viz. which was eccleſiaſtical, and derived from the biſhops of the dioceſe, for he admits of no other,) 'was not uſually 'exerciſed by the univerſity in its collective 'capacity. But a particular *officer* was em-'powered to exerciſe it, under the name of '*chancellor*; who, *as official*, acted by an

 'authority

[s] That expulſion is a puniſhment merely academical, can admit of no doubt; and lord Coke himſelf has informed us, that no eccleſiaſtical power could reform and correct by impriſonment. 4th Inſt. c. 74.

[t] P. 22.

'authority derived to him from the univerſi-
'ty, was accountable to them for the uſe
'of it, and liable to have his acts annulled at
'their diſcretion; every perſon who thought
'himſelf aggrieved by the *chancellor*, being
'at liberty to apply to the body for redreſs.'

SUFFICIENT reaſons have been already given, why a juriſdiction in matters of academical diſcipline, neither was, nor could be derived from the biſhop of the dioceſe; and it would be eaſy to ſhew alſo, that as far at leaſt as related to juriſdiction in ſuch caſes, *the chancellor of the univerſity* was ſomething more than an [v] *official*. For inſtance; were oaths of obedience ever taken to [w] *officials* by their *conſtituents*, or a coercive power exerciſed by the former over the latter? However I ſhall for once wave theſe objections to his premiſſes, and only conſider the concluſion he draws from them; which, I muſt ſay, is the moſt extraordinary I ever met with in any author, who pretended to the leaſt degree of knowledge in canon or eccleſiaſtical law. *The chancellor is only official to the*

[v] SEE note [1] P. 6.

[w] THE paper preſented, on the part of this univerſity, to arch-biſhop Laud A. D. 1635, againſt his metropolitical power to viſit, begins thus; *It being laid for a ground, that the chancellor of the univerſity, as* ORDINARIUS, *hath, and of ancient time had* ORDINARY JURISDICTION *within the univerſity:* which ſufficiently ſhews, that the chancellor was then and had been long looked upon in a higher light than that of an *official*; for as Calvin obſerves, Ordinarius is eſt, qui juriſdictionem jure ſuo, non alieno beneficio habet.

the univerſity, and * *therefore appeals muſt lie from him to them.* But where did *this great canoniſt* learn this? There is not, I am perſuaded, a ſingle author in the world, who has treated of appeals upon the footing of eccleſiaſtical juriſdiction, from whom he might not have learnt the direct contrary. Officials are conſtantly mentioned by the canoniſt, as having the ſame juriſdiction as the perſons by whom they are conſtituted; and appeals from the former to the latter are *therefore* declared unwarrantable, becauſe the courts or conſiſtories of both are eſteemed the very ſame. This is the conſtant language

* Bishop Stillingfleet in his eccleſiaſtical caſes obſerves, that *a chancellor*, or biſhop's official, *hath the ſame court with the biſhop, ſo that the legal acts of the court are the biſhop's acts, by whoſe authority he ſits there; ſo that no appeal lies from the biſhop's officer to himſelf.* Whence it follows, that ſuppoſing even in this caſe, what Mr. Attorney-general, in pleading againſt Dr. Bentley, ſuppoſed only in the caſe of a grant by charter of a joint cognizance of pleas by chancellor, maſters, and ſcholars, viz, that *the congregation are to be conſidered as the judges of the court, and the vice-chancellor only as their official*; yet the acts of the vice-chancellor's court would be conſidered as the acts of the congregation itſelf, by whoſe authority he ſat there, ſo that no appeal would ſtill lie to the congregation from *this their official*. That conſummate advocate, as well as judge, was ſo far from inferring a right of appeal from the chancellor or vice-chancellor upon any ſuch grounds as this, that he had even urged but a little before, that *it depended upon a poſitive law*; and yet *this author*, with an *ignorance* and *confidence* equally *amazing*, not content with endeavouring throughout his whole pamphlet to ſubvert the truth of that aſſertion, pretends even to ſupport *his own blunders* with a, *ſo Mr. Attorney-general. An inſinuation, which* (to uſe his own words) *is both impudent and unjuſt.*

language of all that treat of *officials*, either upon the footing they ſtand here in England, or elſewhere: and tho' this author's reading had not extended to any of theſe, even [y] *Hickes* himſelf, whoſe virulence as well as motto he has copied, would have told him the very ſame. In ſhort, *the editor of the opinion* appears to be the only perſon, who ſince the days of Boniface the eighth, ever imagined there could be any ſuch appeal: and ſo contrary to all reaſon did that pope think it, as to declare, that even no cuſtom of how long ſtanding ſoever was capable of warranting a method of appealing, which, in effect, was from the ſame perſon to the [z] ſame again.

HERE then the *editor of the opinion* has done us a favour without intending it, and after being at a vain expence of time and pains, in endeavouring to raiſe a fanciful fabrick of [a] eccleſiaſtical juriſdiction, upon which

[y] SEE his diſcourſes (or rather invectives) upon Dr. Burnet and Dr. Tillotſon, wherein the latter is called *an atheiſt, as much as a man could be, tho' the graveſt certainly that ever was.*

[z] ONE caſe, and but one there is, in which an appeal may be made from the ſame judge to the ſame again. It is no way applicable to the point before us; however, if the reader ſhould be deſirous of ſeeing it, he may find it in *Clarke's praxis*, tit. 236.

[a] WE have already ſeen, that an appeal to the univerſity from the chancellor, conſidered even as *their official*, is not, as the *editor of the opinion* inſinuates, agreeable to the practice in other eccleſiaſtical courts; and I muſt here obſerve, that the appointment of delegates to hear and judge of all appeals, is not much more ſo. For a biſhop neither does, nor did uſually

which to place his idol of an appeal to the univerſity, has unluckily kicked it down and effectually demoliſhed it, by the very ſteps he took to compleat it. But no wonder; 'for the queſtion diſcuſſed is of ſuch a na-'ture, that it cannot be *determined*, nor in-'deed *tolerably treated* by any one, who hath 'not a pretty *exact knowledge* of the hiſto-'ry, cuſtoms, and ſtatutes of the univer-'ſity; and who is not, beſides, at leaſt *compe-'tently ſkilled in the civil and eccleſiaſtical laws*. 'And yet, this writer, as tho' nothing elſe 'was required of him, beſides a *confident 'face*, and *willing mind*, boldly undertakes 'to decide upon it, under *a perfect incapa-'city* in all theſe reſpects [b]'.

HOWEVER, ſo enamoured is he with this *child* of his own invention, this favourite eccleſiaſtical juriſdiction in matters of academical

uſually appoint delegates to judge of appeals from his archdeacon, nor an arch-biſhop to judge of thoſe from the biſhops of his province, (the chancellor being the uſual judge in the former caſe, and the principal official in the latter); and tho', upon a further appeal to the king in chancery, delegates are now uſually appointed by commiſſion under the great ſeal, that appointment is not founded upon the practice in eccleſiaſtical courts, nor has it only a reference to them, (the very ſame being done upon an appeal from the court of admiralty), but upon an expreſs act of parliament. So little reaſon had this author to ſay, *that the univerſity authorized delegates to hear and judge appeals, as was agreeable to the practice in other eccleſiaſtical courts* (p. 22.); eſpecially when he was ſpeaking of times, in which even his majeſty's court of delegates had not ſo much as a being.

[b] Opinion, &c. p. 2.

academical diſcipline, that he will needs procure it a *ſettlement* amongſt us, even upon the footing of the royal ſtatutes. For this purpoſe he [c] alledges, that 'they enjoined, that 'the juriſdiction of the univerſity (of the 'chancellor he ſhould have ſaid, if he meant 'to ſpeak truth) ſhould be directed by the '*civil law*; that is, as every one underſtands, 'a [d] mixture of the civil and canon law, or 'what *Oughton* calls *jus eccleſiaſtico-civile*; 'the ſame which prevails in all eccleſiaſtical 'courts to this day.' But does *every one underſtand jus civile* to mean the ſame, as *jus eccleſiaſtico-civile?* I have a ſtrange notion, that the writers, who ſpeak of the *jus civile* prevailing in our court of admiralty, were never *ſo underſtood*. In the two univerſities, ſays [e] Dr. Duck, Jus dicitur *ex legibus Romanis*, in which there is certainly *no mixture of canon law*; and afterwards, Cancellarius utriuſque academiæ cauſas dijudicat per *jus civile & conſuetudines academiæ*: but in the preceding ſection, wherein he treats of eccleſiaſtical courts, his words are, Jus dicitur in foro eccleſiaſtico *ad juris civilis & canonici normam*. Again, ſpeaking of the court held in this univerſity in particular, he ſays, In libellis, productionibus teſtium, ſententiis, aliiſque

[c] P. 27.

[d] AND yet *this ſame author* ſays, p. 25, that the chancellor's court was directed by this mixt kind of law only till the reign of Edward the ſixth.

[e] De uſu & authoritate juris civilis. L. 2. c. 8.

aliiſque omnibus cauſarum terminis, proceditur *ſecundum juris civilis formam*; but where he ſpeaks of eccleſiaſtical courts, actio per libellum proponitur, poſt litem conteſtatam teſtes ſecretò examinantur, dantur exceptiones & replicationes, & obſervantur termini cauſarum *utroque jure* præſcripti. Now is it not plain, that this great civilian never *underſtood* the *jus civile* by which our chancellor is authorized to proceed, to be *a mixture of the civil and canon law, or what* Oughton *calls jus eccleſiaſtico-civile, the ſame which prevails in all* [f] *eccleſiaſtical courts to this day?* and yet *every one underſtands it ſo*, if you will believe this *author*; and ſo every one may, who underſtands no more of the matter than he does.

AGAIN, a court poſſeſſed of eccleſiaſtical juriſdiction, muſt have a power to inflict eccleſiaſtical [g] cenſures. Theſe are penance, excom-

[f] A. D. 1594, arch-biſhop Whitgift was empowered by a commiſſion from the queen under the great ſeal, to make a diligent and particular ſurvey of all and ſingular courts eccleſiaſtical within his province, as well in places exempt, or which claimed any peculiar juriſdiction whatſoever, as in places not exempt. No man underſtood the nature of our juriſdiction better than the arch-biſhop, or was leſs apt to make abatements in the extent of his own: I ſhould be glad to know therefore, what other reaſon can be given, why no ſurvey was then made of the courts held in this univerſity, than that they were not eccleſiaſtical.

[g] THE *editor of the opinion* (p. 21.) charges the *inquirer* with *amazing ignorance* for aſſerting, that the univerſity *has* nothing

excommunication, ſuſpenſion ab officio, beneficio, or ab ingreſſu eccleſiæ, deprivation of benefice, and degradation, or deprivation of orders. Now not one of theſe has the chancellor, or delegates appointed by the univerſity, any power to inflict; and yet this *author* ſubmits it *to the capable and impartial reader, whether it be not moſt evident, that the juriſdiction of the univerſity is, in the propereſt ſenſe of the word, eccleſiaſtical.* [h]

In ſhort, the royal ſtatutes neither empower the chancellor of this univerſity, nor any body elſe, to inflict eccleſiaſtical cenſures; and indeed, as *the crown*, according to

thing to do with eccleſiaſtical cenſures, and that ſuſpenſion from degrees *is* a puniſhment merely academical. For, according to this *excellent logician*, they muſt *have now* ſomething to do with theſe cenſures, merely becauſe they *once had* ſomething to do with one of them; and ſuſpenſion from degrees *is not now* a puniſhment merely academical, becauſe it *was formerly* injoined by a conſtitution or two to be found in Lyndwood. And by the ſame rule he might juſt as well have proved, that maſs *is now ſaid* in our college chapels, becauſe it certainly *was ſaid there formerly*: for by his own confeſſion (p. 24.) the power of excommunication was exerciſed here no later than the reign of Henry the eighth; and it is plain, that, as the conſtitutions to which he refers in regard to ſuſpenſion, related only to thoſe who deviated from the Romiſh faith, or did not ſtrictly obſerve the clerical dreſs and tonſure of that age, they, as well as the celebration of maſs, muſt have ceaſed to be obligatory at the reformation at leaſt. And yet, he with his *uſual modeſty* calls ſuch ſtuff as this *letting in one ray or two of light, in mere compaſſion on that utter darkneſs, which environs the inquirer, and ſhuts out all law, canon as well as civil.* But, as his very light is darkneſs, how great is that darkneſs!

[h] P. 32.

to biſhop Stillingfleet, *never pretended, by virtue of its ſupremacy, to judge of the ſame cauſes as the pope's legates a latere, and to proceed in the ſame manner with eccleſiaſtical cenſures*, ſuch power being exerciſed by the legates by virtue of their *function* as well as commiſſion, it would have been ſtrange if they had. For, as the crown, after the reformation, was to exerciſe the ſame degree of power over the univerſity, as the pope by his legates had or might have exerciſed; as it empowered [i] lay-commiſſioners to exerciſe this power, approved of a lay-chancellor of the univerſity, and foreſaw that his ſucceſſors would probably be laymen alſo; it would have been ſtrange indeed, to have had ſuch cenſures preſcribed by the royal ſtatutes, as could neither have been inflicted by the chancellor of the univerſity, whoſe proper buſineſs it was to inflict them; by ſeveral nor perhaps any of the acting commiſſioners, appointed by the crown to ſee them properly inflicted; nor even by the king or queen in perſon, by whoſe autho-

[i] Prynne informs us, that but one of the commiſſions for this univerſity is extant, and that the perſons named therein are Sir William Paget commiſſioner of the king's (Edw. 6.) houſhold, Thomas Smith the king's ſecretary, John Check the king's tutor, William Mayor doctor of law, one of the maſters of requeſts, and dean of St. Paul's, and Thomas Wendie the king's phyſician, and that all, or even any one of them, were empowered to viſit; which, if they were to proceed by eccleſiaſtical cenſures, was impoſſible as well as abſurd, they being all laymen except one.

rity they were to be inflicted, for want of the requiſite [k] *clerical function.*

If therefore this *haſty writer*, inſtead of undertaking to anſwer what *he had hardly patience to peruſe*, had given himſelf time to conſider, that the pope formerly exerciſed that viſitatorial power over the univerſity, which ſince the reformation has been veſted in the crown; that the *function* of thoſe by whom the pope exerciſed it, was different from that of thoſe who exerciſed it for the crown; and that the chancellor of the univerſity was always an eccleſiaſtical perſon before the reformation, but was a lay-man when the royal ſtatutes were given, and has been ſo ever ſince; he might not only have ſeen a reaſon, why *the power of* [l] *excommunication*

[k] Hence Lord Coke himſelf informs us (4. inſt. c. 74.) that, if the king's delegates be ſpiritual men, they may proceed to ſentence of excommunication, but if they are mere laymen, they cannot. The canon law alſo in general, as well as the 13th of the conſtitution made in the year 1640 in particular, declares, that no excommunications or abſolutions are valid, except they be pronounced by ſome perſon in holy orders.

[l] Tho' offenders againſt ſome of the old ſtatutes were thereby declared ipſo facto excommunicated, the nature of the juriſdiction exerciſed in the univerſity even then, cannot properly be aſcertained from that circumſtance; any more than the nature of parliamentary juriſdiction can be aſcertained from what is related by lord Coke, viz. *that in many caſes acts of parliament have adjudged men excommunicate ipſo facto.* 4 Inſt. c. 74. Again, if *the probate of wills hath at all times belonged, and ſtill belongs to the univerſity*, as this author alledges; he may find in lord Coke's Reports, that in

cation was exerciſed as late as the [m] *reign of Henry the eighth* [n], but why it never has been exerciſed ſince.

AFTER all then, the point in diſpute muſt be determined by Q. Elizabeth's ſtatutes *de cancellarii officio* and *de cauſis forenſibus*, and to the conſideration of theſe I ſhall now proceed.

THE former of theſe comprehends, as its very title intimates, the ſeveral branches of the chancellor's authority; and the firſt

in many places the very lords of manors have the probate of wills likewiſe.

[m] Dr. Cliffe, chancellor to the biſhop of Ely, was then excommunicated by Dr. Edmunds, vice-chancellor of the univerſity, for preſuming to excommunicate a privileged perſon; and, the matter being brought before cardinal Wolſey the pope's legate, was ordered to make his ſubmiſſion to the vice-chancellor, which he accordingly did, and was thereupon publickly abſolved.

It is to be obſerved, that this univerſity had, about four years before, viz. A. D. 1524, in imitation of the Oxford act of ſubmiſſion to the cardinal, paſſed a *grace* in full congregation, in terms at leaſt equally ſubmiſſive. His eminence had been complimented with the title of *majeſty* in the former, but the latter went a ſtep ſtill further, and ſtiled him *numen præſens*: it humbly and moſt earneſtly begged of him alſo to abrogate, alter, or amend at his pleaſure, the old ſtatutes of the univerſity; or to give them an entire body of new ones, enforced by whatever penalties he thought proper; containing at the ſame time the fulleſt renunciation of every privilege that might ſtand in the way of the cardinal's abſolute authority, and binding themſelves and their ſucceſſors to ſubmit with the moſt implicit obedience to all ſtatutes and orders ſent them by his eminence, at any time during the term of his natural life.

[n] Opinion, &c. p. 24.

clauſe

clauſe declares, 'Cancellarius poteſtatem habebit ad omnes omnium ſcholaſticorum atque etiam eorum famulorum controverſias ſummariè & ſine ulla juris ſoleunitate præter illam quam nos præſcribimus, ſecundum jus civile & eorum privilegia & conſuetudines, tum audiendas & dirimendas;' whereas, by virtue of the old ſtatute *de juriſdictione magiſtrorum*, many of theſe controverſies had before been cognizable by regent maſters. Then follow the ſeveral clauſes by which he is authorized to call congregations; to inveſt ſuch perſons with degrees *as have performed the ſeveral duties contained in theſe ſtatutes* °, and to reject thoſe that are unworthy; to puniſh the violators of

° THE *editor of the opinion*, p. 13. ſinks this clauſe upon his reader, and repreſents the chancellor as empowered, in general to GIVE degrees. Such an endeavour, in him eſpecially, to enlarge the chancellor's power, could not but ſurpriſe me a little at firſt; but in turning a page or two further I ſoon found, that it was only to give him a pretence for putting it under certain *reſtrictions*, not only in this, but in every other particular. For, ſpeaking of the ſeveral powers given in this ſtatute, he urges, p. 16. that *they are to be limited by the known rights of the ſenate, among which that of appeals is to be included*; becauſe otherwiſe *the chancellor might* CONFER *degrees by his* SOLE *power*.

To prevent therefore the readers being impoſed upon by ſuch fallacious arguments, I muſt obſerve, that ornare gradibus, is not *to give degrees*, but *to inveſt with degrees*; that the king only can *give* a degree, as he only can ſupply the defect of a legal claim to one, by diſpenſing with the want of the ſeveral ſtatutable qualifications required; that neither the chancellor nor the ſenate have, properly ſpeaking, any

of the ſtatutes; and to ſee, that the ſeveral officers of the univerſity keep themſelves within the bounds of their duty. And in the next place, he is empowered ad ignavos, graſſatores, rei ſuæ diſſipatores, contumaces, nec obedientes, ſuſpenſione graduum, carcere, aut alio leviori ſupplicio, judicio ſuo caſtigandos; but with this reſtriction, non licebit tamen cancellario, aliquem ſcholarem exilio multare, aut aliquem pileatorum aut præfectorum collegiorum incarcerare, abſque conſenſu majoris partis præfectorum collegiorum.

Now is it not as plain as words can make it, that the firſt clauſe in this ſtatute relates to the chancellor's juriſdiction in cauſes between two parties only; and that the laſt of thoſe which are here quoted, gives him a juriſdiction in matters of diſcipline merely. In the former he is ordered to proceed according to the civil law and the privileges and cuſtoms of the univerſity; but no ſuch limitation is preſcribed to his proceedings in the latter, in them he may even act *judicio ſuo* [P]; only in baniſhing a ſcholar, or impriſoning

any power in relation to degrees, except that of rejecting the unworthy; but that the *admiſſion* or *inveſtiture* is the act of the chancellor, or vice-chancellor, and of him only.

[P] THE *editor of the opinion* would perſuade us, that *nothing further was intended by judicio ſuo, than to enable the chancellor to paſs ſentence without the concurrence of the heads.* But if ſo, the

priſoning one of the pileati or heads, he muſt have the aſſent of the major part of maſters of colleges. This *author* indeed inſinuates, that the reſtriction mentioned in the firſt clauſe of the ſtatute, ſhould be applied to all the reſt. Shall we then ſuppoſe, that the chancellor is not only to decide controverſies according to the civil law, &c. but to call congregations, and admit to degrees, &c, &c. acording to the civil law likewiſe? If we do, the ſuppoſition is evidently ridiculous, and carries its own confutation along with it.

HENCE, upon the footing of this ſtatute, there is not the leaſt ſhadow of foundation

the words themſelves were inſerted without any reaſon or meaning; for it is plain, that he would have been empowered to paſs ſentence by his ſole authority, even in caſe they had been entirely omitted. *Or*, ſays he, *by judicio ſuo may be underſtood, that the chancellor is empowered to inflict which of the ſeveral cenſures mentioned in the ſtatutes, he ſhall think fit, on offenders.* But then the limitation immediately following, viz. that he ſhould not baniſh, &c. without the conſent of a majority of heads, would be abſurd as well as uſeleſs: for what ſenſe is there, in prohibiting a perſon to inflict without the conſent of others a puniſhment, which even without ſuch a prohibition, he would not have had the power to inflict? It is plain from the ſtatute, that baniſhment is not one *of the ſeveral cenſures, of which the chancellor might*, according to this author, *inflict which he ſhoula think fit*; and I ſuppoſe, even he will ſcarce attempt to perſuade us, that *that* higheſt of academical puniſhments may be included under the general words, aut alio leviori ſupplicio. He adds, that *no art of conſtruction can pick, out of the words judicio ſuo, the ſenſe of final determination*; and yet I ſhall ſhew him preſently, that no leſs than one hundred and ſixty four regent and non regent maſters picked that very ſenſe out of them.

for

for a right of appeal to the univerſity in matters of diſcipline; let us inquire therefore, whether any better grounds can be found for it in the 48th. The title of it is *de cauſis forenſibus*, and the words, as far as relates to the point in queſtion, are theſe; 'Omnes cauſæ & lites, quæ ad univerſitatis 'notionem pertinent, tam procancellarii 'quam commiſſarii judicio ſubjiciantur, niſi 'procuratores &c. aut eorum aliquis &c. 'fuerit *alter litigantium*,—finem autem acci-'piant infra triduum, ſi fieri poteſt, omni 'juris ſolennitate ſemota. A ſententia com-'miſſarii ad procancellarium appellabitur 'infra 24 horas poſt latam ſententiam; a 'procancellario autem ſive lis coram eo 'cœpta ſit, ſive per appellationem ad eum 'devoluta, ad [q] univerſitatem provocatio fiat, 'infra biduum a tempore latæ ſententiæ & 'non poſt.'

MR.

[q] The determination of the univerſity by its delegates, has been generally underſtood to be final in civil cauſes, becauſe no further appeal is mentioned: I ſhould be glad to know therefore, why, as an appeal is given by the 43d ſtatute from the puniſhment of the proctor to the vice-chancellor, and no further, his determination in ſuch caſes ſhould not be ſuppoſed final likewiſe. Again, neither in Edward the ſixth's, nor in Q. Elizabeth's firſt body of ſtatutes, was there one about appeals, even *in cauſis forenſibus*; and tho' the queen added *this* in her ſecond, it was certainly without any view of leſſening the vice-chancellor's authority in caſes of diſcipline, for *that* ſhe actually increaſed at the very ſame time, I cannot help adding, that as her majeſty

Mr. W——, after maturely conſidering theſe two ſtatutes, was of opinion, that the chancellor's juriſdiction in matters of diſcipline is founded on the former, and that the latter relates to his juriſdiction in civil matters only; 'and therefore' (to uſe his own [r] words) 'the firſt gives power con-'tumaces &c. ſuſpenſione graduum, car-'cere, aut alio leviori ſupplicio judicio ſuo 'caſtigare; by the latter, power is given 'to determine cauſas & lites, viz. cauſas 'forenſes, for that is the title of the ſta-'tute.' Here the reader cannot but obſerve, that this learned gentleman grounds the chancellor's juriſdiction in matters of diſcipline upon a particular clauſe in the 42d ſtatute, and, to prevent being miſunderſtood, has even quoted it: but this precaution, it ſeems,

had reſtrained the vice-chancellor from inflicting any of the higher academical cenſures, without the concurrence of the major part of heads of colleges; the permiſſion of appeals in matters of diſcipline was in effect rendered unneceſſary. For ſurely it is rather more probable, that three out of five, which is the greateſt number of which delegates can conſiſt, ſhould concur in an erroneous or partial ſentence; than that the vice-chancellor and eight out of ten aſſeſſors, (for more heads are ſcarce ever in the univerſity at once, that are able at leaſt to attend the court) ſhould do the ſame. I am inclined to think therefore, that the reaſon of impoſing that reſtraint upon the vice-chancellors proceedings in cauſes of diſcipline, which is not impoſed upon them in ſuch as are civil, was becauſe it was neceſſary enough in caſes where an appeal would not lie, but ſuperfluous in others where it would.

[r] Inquiry, p. 30.

ſeems, was not ſufficient; for, notwithſtanding his great care and exactneſs in this particular; notwithſtanding he has never ſaid, what the deſign of the 42d ſtatute was, further than as it was different from that of the 48th; and notwithſtanding he has not taken the leaſt notice of, much leſs laid the leaſt ſtreſs upon the firſt clauſe, relating to the hearing and deciding the controverſies of the ſcholaſtici and their attendants; this *very ſagacious advocate* for appeals, *thinks he may ſafely refer it to any reader, whether the* SINGLE *deſign of this ſtatute was to convey authority in criminal cauſes*; *deſires us to read again the very firſt clauſe, cancellarius poteſtatem habebit ad omnes — controverſias, &c.*; and then adds this very *pertinent* reflection, *Nothing ſure but the moſt outrageous zeal for a deſperate cauſe can make any one affirm, that the word controverſias is neceſſarily confined to the tryals of offenders*[s]: — and again, *to judge omnes controverſias ſcholaſticorum (as we are now to render the words) is to judge all offences committed by ſcholars*[t]. But indeed 'tis this author's conſtant practice, to miſrepreſent his adverſary in the firſt place, that he may be the better able to confute, or (what is much the ſame with him) abuſe him in the next.

[s] Opinion, &c. p. 14.

[t] Opinion, &c. p. 16.

'WITH as little foundation, ſays he, has 'it been aſſerted, that the juriſdiction given 'in the 48th ſtatute relates only to *civil* 'cauſes. The ſingle ground of this aſſer-'tion is the title of the ſtatute, viz. *de cauſis* '*forenſibus*. It happens that a *certain ſet of* '*men, by endeavouring for a long time to de-*'*ceive others*, have in the end deceived them-'ſelves. For I would, in charity, ſuppoſe 'them to be *ſincere*, when they tranſlate '*cauſæ forenſes*, *cauſes between party and* '*party*. It is true, no ſuch uſe of the words 'can be found in *ancient authors*; or, in 'what might have been more convincing 'to them, *modern dictionaries*. But what 'then? admitting that a *ſchool-boy* would 'have conſtrued theſe words, *tryals in court*, 'or *public tryals*, yet this ſure cannot be 'alledged as a precedent to *grave and wiſe* '*men*: much leſs can it be expected, they 'ſhould reverence quotations drawn from '[u] heathen writers, who had no idea at all 'of

[u] The author ſeems to glance at theſe words in Cicero de natura deorum, *nec ſi id facerem in cauſis forenſibus, idem facerem in hac ſubtilitate ſermonis*. But, if he imagined, that cauſa has as determinate a forenſick ſignification in *this heathen writer*, as it has in the mouth of a civilian, or in a body of ſtatutes, his acquaintance with him cannot have been great. For in the Roman author *cauſa* ſignifies no more than the ſubject of debate or conſideration, whatever be the place where, or occaſion upon which, it happened to be diſcuſſed, as is plain from his own words: Nihil eſt enim

'of the ways of ſupporting diſcipline in an 'univerſity [w].'

THE reader, I am perſuaded, cannot without the utmoſt indignation behold the whole of that honourable as well as uſeful profeſſion of the law, thus abuſed in the firſt place, as employing their endeavours only *to deceive mankind*; and then one of its moſt upright as well as ableſt members groſly traduced in the next, as ſcandalouſly deficient in point of *ſincerity*, or at leaſt in point of *knowledge*. Mr. W——, after thirty years ſpent in the ſtudy of the law, and acquiring the higheſt reputation in it, is, it ſeems, at length diſcovered by *a little forward academic* who never ſtudied it for half an hour, to be of all men the moſt *ignorant*; and *that*, in regard to the meaning of two Latin words, which of all others he ought to have been the beſt acquainted with; the true ſenſe of which is at the ſame time, not only known to this *extemporary lawyer of ours*, but is ſo very clear and evident from *ancient authors* and *modern dictionaries*, that even a *ſchool-boy* could not have

enim, quod inter homines ambigatur: ſive ex crimine *cauſa* conſtet, *ut facinoris*: ſive ex controverſia, ut *hæreditatis*: ſive ex deliberatione, ut *belli*: ſive ex perſona, ut *laudis*: ſive ex diſputatione, ut *de ratione vivendi*: in quo non quid factum ſit, aut fiat, futurumve ſit, quæratur, aut quale ſit, aut quid vocetur. De oratore, l. 2.

[w] P. 14.

have miſtaken it. For inſtance, *cauſa* is not a *cauſe*, but a *tryal*. Do *ancient authors* ſay this? no. Do *modern dictionaries?* no. To this *author's accuracy* it is that we are ſolely indebted, for taking away all diſtinction between *cauſa* and *cauſæ cognitio*, for confounding a *cauſe*, or ſubject of tryal, with the *tryal itſelf*. Again, becauſe *forenſis* ſignifies *belonging to a court of juſtice*, when it is applied to what has no neceſſary relation to one, it muſt imply juſt the ſame and no more, when it is even applied to what has already the ſtricteſt relation thereto; and ſo we are to ſuppoſe it added to *cauſa*, neither to aſcertain nor limit its true ſenſe and meaning, nor conſequently for any purpoſe whatſoever. Such is the tranſlation endeavoured to be obtruded upon the reader, preferably to that which is given by Mr. W——; tho' that is not only moſt certainly and notoriouſly right; but, to the eternal reproach of *this weak and ſhallow pedant*, is warranted alſo by Ulpian, *an ancient author* and a civilian into the bargain; and by *the juridical lexicographers*, who in ſuch caſes are the propereſt vouchers; and even by the *modern dictionary*, or theſaurus of Robert Stephens, where the cauſæ or actiones forenſes are interpreted, quæ alibi *civiles*, ſive rei familiaris, *privatæ*, aut pecuniariæ dicuntur.

BUT it is not only from the title of the 48th ſtatute, that we infer, that it gives an appeal in matters of controverſy concerning civil rights, and in no others. For it can ſcarce eſcape the notice of even the moſt ſuperficial obſerver, that, in the cauſes or *lites* of which it treats, expreſs mention is made of *alter litigantium*; and if that does not amount to a proof, that there were two [x] litigants or parties, I know of no words capable of ſo doing. Where alſo the ſtatute comes to ſpeak of appeals from the vice-chancellor, it ſays they ſhall take place, ſive *lis* coram eo cœpta ſit, ſive per appellationem (a commiſſario) ad eum devoluta. And can the ſenſe of any word be plainer, or more determinate than that of *lis* is? Or could any have been made choice of, that was more uncapable of ſignifying a cauſe of correction or diſcipline? Again, theſe *lites* are ſuppoſed to be *commenced before* the vice-chancellor or commiſſary, which could not with any propriety be ſaid of cauſes wherein they acted *ex officio*; and beſides, the latter was never underſtood to have, nor in any inſtance

[x] The reader is deſired to obſerve alſo, that the cauſes mentioned in the old determination of delegates concerning ſecond appeals, which is quoted by the *editor of the opinion* p. 25. were only cauſes between two parties; expreſs mention being therein made of the *actor* and *reus*; the latter of which appellations is given by Feſtus, as well as by the Civilians, to him, qui cum altero litem conteſtatam habet.

inſtance ever has exerciſed, any juriſdiction in matters of diſcipline from the year 1570 to this day. Add to this, that it appears plainly, as well from the confeſſion of a very great part of the body of the univerſity in 1572, of which more will be ſaid preſently, as from a *grace of the houſe* in 1593, wherein appeals are mentioned as lying only *in quibuſcunque forenſibus controverſiis*; that this ſtatute was univerſally and conſtantly underſtood, to relate to controverſies about civil rights, and to them only. And yet *the editor of the opinion*, with a *modeſty* exactly commenſurate to his *knowledge*, affirms, that *the ſingle ground of this is the title of the ſtatute, viz. de cauſis forenſibus* [y]; and that *ſo far are* [z] *theſe* (the queen's) *ſtatutes from prohibiting appeals*, viz. in cauſes of diſcipline, *that they have actually given the ſtrongeſt ſanction to this practice, by admitting the right in very general terms, and preſcribing rules for the* [a] *exerciſe of it, ſtat.* 48.

As therefore a juriſdiction in matters of diſcipline is given to the chancellor or vice-chancellor, by expreſs words in the 42d ſtatute, and he is thereby authorized to puniſh *judicio ſuo* in ſome caſes, with the aſſent of

[y] Opinion, &c. p. 14.

[z] Opinion, &c. p. 30.

[a] The old ſtatutes to which he refers p. 26. relate alſo juſt as little to cauſes of diſcipline; tho' he ſpeaks of them in much the ſame terms, as he does of this of Q. Elizabeth.

of a majority of heads in others, but obliged to ſubmit to an appeal to the univerſity in none; and as the 48th ſtatute relates to cauſes of a civil nature only, and preſcribes appeals in no other but them; it is ſubmitted to the unprejudiced reader, whether Mr. W——had not ſufficient reaſon to conclude, that the chancellor's juriſdiction is final, or uncontroulable by delegates, in the firſt inſtance.

Even *this author* does at length admit, that Mr. W—— and Mr. N——, who concurred with him in opinion, *are perſons eminently qualified to judge of all diſputes of this nature*; only *he thinks they were abuſed by a partial and unfair repreſentation of the caſe* [b]. As a proof of this he alledges, that *no other evidence was laid before them, than certain extracts from Q. Elizabeth's ſtatutes, which, tho' they afford ſufficient evidence of the right of appeal, are by no means the whole evidence* [c]. To this objection the reader could not have been at a loſs for an anſwer from what has been ſaid; but as the author *waves it*, in order *to come directly to the queries themſelves, we ſhall* do the ſame. *The firſt*, he ſays, *is a maſter-piece in its kind, and may be of uſe to inſtruct future queriſts, how to propoſe their doubts in the moſt convenient manner. For inſtead of aſking the lawyers,*

[b] Opinion, &c. p. 19. [c] Opinion, &c. p. 8.

whether the powers given in the 42d ſtatute are ſubject to appeal; the queſtion is put to them, whether in ſuſpending Mr. A—— they had acted under that ſtatute[d]? and yet, the very next words in the query are, *and whether any appeal can lie againſt the ſuſpenſion of A—— by virtue of that ſtatute, viz. the 42d.* And now, if *this author* would but undertake to ſhew any real and material difference, betwixt aſking, *whether the powers given in a particular ſtatute are ſubject to appeal*, and aſking, *whether any appeal can lie againſt an act that is done by virtue of that ſtatute*; it would certainly be a maſter-piece of its kind, and of great uſe to inſtruct future cavillers at leaſt.

Again; inſtead of inquiring, whether the juriſdiction given in the two ſtatutes be the ſame or different, the query is, (on ſuppoſition of a difference) to which claſs of tryals Mr. A——'s caſe belonged[e]? And yet one part of the query is, *whether this caſe muſt be deemed one of the cauſæ forenſes*; to which if an anſwer had been returned in the affirmative, this ſuppoſed diſtinction of juriſdiction would have been at an end.

In ſhort, the lawyers were made to believe, (for tho' he tells us elſewhere, their buſineſs is

[d] Opinion, &c. p. 9. [e] Opinion, &c. p. 9.

is to deceive others, it ſeems by this account, that nothing is eaſier, than to deceive them,) *that this was the main point in diſpute, whether the caſe before them was of a criminal, or (as the inquirer expreſſes it) of a forenſick nature. It would have been hard indeed, if a deſign ſo well laid, and ſo artfully conducted, had failed of ſucceſs. Accordingly, we find both the lawyers expreſsly declaring, that the caſe in queſtion belonged to the* 42d *ſtatute, and from thence* SEEMING *to infer* (what however they have *really* and [f] *expreſsly* inferred) *that an appeal is not to be allowed* [g].

GENTLE reader, be pleaſed only to peruſe the queries themſelves, and the anſwers given them; and then, if thou canſt believe, that the honeſt queriſt (who by the way was no fellow, nor ſo much as head of a college) *laid his deſign ſo well*, and *ſo artfully conducted it*, as fairly to over-reach two of the ableſt lawyers in the kingdom, and *make them believe*, nay even *expreſsly declare, that the caſe in queſtion belonged to the ſtatute* he liked beſt; thou haſt my full permiſſion to believe it accordingly.

IN the mean time I ſhall readily agree with *this author*, that, if the ſame ſtate of the caſe, which ſome years ago was laid before the greateſt lawyer of this or any age,

[f] See the Inquiry, p. 28, &c.
[g] Opinion, &c. p. 9.

had been laid before theſe two learned gentlemen of the long robe, their anſwers probably would not have been greatly different from that of the eminent lawyer whoſe opinion he has quoted, *as a little needful ſeaſoning in his inſipid performance, and which indeed gives it all the real weight and authority it can poſſibly carry with it to men of ſenſe* [h]. But then my reaſon for thinking ſo is, that in the ſtate of the caſe, of which we are now ſpeaking, there appear to have been *two leading points*; both of which ought, and yet neither of them ſeem to have been, fully explained.

The firſt of theſe was the commiſſary's patent; from a mere inſpection of which any perſon would be led to think, that he *has* juriſdiction in matters of diſcipline, tho' in fact and reality he *has not*. To explain this, it will be neceſſary to obſerve, that formerly, when the univerſity was governed by ſtatutes of their own making, the chancellor was empowered to [i] *commit* the cognizance of cauſes *ex officio* as well as others, with

[h] Opinion, &c. p. 6.

[i] Liceat quoque cancellario ad ſui exonerationem alicui non ſuſpecto——ad certas cauſas vel univerſitatem cauſarum vices ſuas——committere, niſi talis ſit cauſa, quæ ſua natura delegationem non *requirit*, ut in atrocibus delictis, quæ bannitionem vel incarcerationem requirunt. And again; Item declaratum eſt, quod in correctionibus, rectores vel procuratores debent aſſidere cancellario vel ejus commiſſario. See the old ſtatutes.

with an exception only of offences of ſo atrocious a nature, as required baniſhment or incarceration; and that, as it is very unuſual, in the univerſity at leaſt, to deviate from old [k] forms, the commiſſary's patent has continued to run in the ſame terms, ſince the royal ſtatutes were given, as before; tho' [l] one part of his juriſdiction was really taken away thereby. For the reader will pleaſe to remember, that by the [m] 42d of theſe ſtatutes, matters of diſcipline were made cognizable by the vice-chancellor only, ſo that he was no longer empowered to *commit* any of thoſe cauſes, as he was before; and accordingly it appeared, as well upon the ſtricteſt ſearch made ſome years ago by an excellent perſon, who was then vice-chancellor, as by the inquiries and

[k] Of this there cannot be a ſtronger proof given, than what the *editor of the opinion* has himſelf furniſhed us with, p. 24; where he ſays, that *the power of excommunication was exerciſed* only *as late as the reign of Henry the eighth*, but that *the power of abſolution is exerciſed at this day*. For nothing ſurely but the ſtrongeſt tenaciouſneſs of old forms, could have continued the practice of a ſolemn *abſolution* at the end of every term, 200 years after that of *excommunication*, to which it has a neceſſary reference, had entirely ceaſed; nor do I wonder, that *this author*, or any body elſe, ſhould make a jeſt of *thoſe being reſtored to God and the ſacraments of the church* in ſo many words, who had never been cut off from the one, nor excluded from the other.

[l] Civil cauſes, and no others, being rendered cognizable by the commiſſary. See the ſtatute in p. 25.

[m] See above, p. 22.

and even confeſſion of the then commiſſary, that no ſuch cauſes had ſince been deemed cognizable in the commiſſary's court. It is ſubmitted therefore to the unprejudiced reader, whether, as a particular ſtreſs was, and even could not but be laid upon the words of the commiſſary's patent, it was not highly neceſſary, that this point ſhould have been fully explained.

AGAIN, there is an entry in Mr. Tabor's book, of the vice-chancellor's determining in the caſe of Mr. [n] Charke and others, that no appeal was to be admitted from his ſentence, as it was given with the conſent of the major part of heads of colleges. This was underſtood to imply, and indeed at firſt ſight appears to do ſo, that the vice-chancellor's ſentence could not be final in any caſe, without the concurrence of a majority of his aſſeſſors; and yet, in truth and reality, it ought not to have been ſo underſtood.

[n] This is the Charke, who in company with ſuch another wretch as himſelf, having prevailed upon the widow of the learned and judicious Hooker, ſoon after his death, to let them go into his ſtudy and look at ſome of his writings, took the opportunity to burn or tear many of them, and amongſt the reſt, the 6th 7th and 8th books of *the eccleſiaſtical polity* which he had finiſhed a little before his death: the loſs of which could never be fully ſupplied, tho' his friend Dr. John Spencer, who was beſt acquainted with his deſign as well as hand, picked out of the author's rough and imperfect draught of thoſe three books the moſt he could, and took care to have them publiſhed afterwards along with the other five.

ſtood. For Mr. Charke and thoſe others, whoſe caſes are referred to and in regard to whom only this determination was given, were cenſured on the ſtatute *de concionibus*; and therefore the determination really imports no more, than that the vice-chancellor's ſentence was valid and final, as it was given with the conſent of a major part of maſters of colleges, tho' without ſuch conſent it would have been invalid and even a mere nullity. For, tho' the vice-chancellor might act by his own ſingle authority in ſome caſes, in theſe that aroſe upon the ſtatute *de concionibus* he could not; and hence, as he had acted, conformably to the ſtatute, with the concurrence of a majority of his aſſeſſors, he might well declare his ſentence to be *therefore* valid, and not liable to be queſtioned by an appeal, upon any pretence of the * nullity or even irregularity thereof. And as no perſon could be more ſenſible than Mr. Tabor, of the impropriety of applying, what was ſaid only in regard to thoſe caſes, wherein the vice-chancellor is obliged to proceed with the conſent of a majority of heads, to others wherein his authority is ſubject to no ſuch limitation; he himſelf has even ſubjoined the

* In caſe of a nullity, recourſe may even be had to the ſame judge by a kind of appeal, which by the canoniſts is ſometimes ſtiled a *querele*, and by the civilians a *ſupplication*.

the following caution: 'Sed tu cave, ne ad 'alias cauſas hoc decretum pertinere affir- 'mes, quam ad eas ſolas, quæ in ſtatutis 'ad judicium procancellarii & majoris par- 'tis præfectorum collegiorum pertinent.'

OF what conſequence it would have been to have had theſe two particulars fully explained, will beſt appear from the words of the opinion itſelf, which I ſhall now proceed to lay before the reader; deſiring him only to take this obſervation alſo along with him, that neither in the firſt, nor in any other query, the leaſt notice is taken of the words of the 42d ſtatute, upon which the vice-chancellor's juriſdiction in matters of diſcipline is entirely founded.

QU. 1. 'Whether appeals to delegates 'by the ſtatute de cauſis forenſibus, are 'reſtrained to * civil cauſes, in which two 'parties are litigant.'

ANSWER. 'The ſtatute *de cauſis forenſibus* is penned in ſuch general terms, that 'I think the appeal to delegates thereby 'allowed, cannot be reſtrained to civil cauſes 'only, wherein two parties are litigant, but 'doth extend to cauſes of correction and 'cenſure; the rather, becauſe the appeal 'from the commiſſary to the vice-chancellor, is given in the ſame clauſe, and 'in

* See above p. 30, 31, and 33.

'in the ſame manner, with the ap-
'peal from the vice-chancellor to dela-
'gates; and the words of the commiſſary's
'patent extend, as well to cauſes of cor-
'rection and cenſure, as to civil cauſes.
'Now there can be no doubt, but that an
'appeal lies from the commiſſary to the
'vice-chancellor in all caſes. The entry
'in Mr. Tabor's regiſter imports, that
'even in cauſes of correction, an appeal
'lies from the ſentence of the vice-chan-
'cellor, when he doth not act jointly
'with the major part of the heads of
'houſes.'

No man can have a higher veneration for the perſon, or a greater deference to the judgment of that truly illuſtrious perſonage, whoſe opinion when attorney-general is here recited, than myſelf; nor can it be imputed to any want of either, that I have preſumed to point out the omiſſion of ſome neceſſary explanations, in the ſtate of the caſe only, upon which it was given. If any apology was due, it could only be ſo to that very excellent perſon, by whom the caſe itſelf is ſuppoſed to have been drawn; and it ſeems ſcarce neceſſary even to him, whoſe known candor will not permit me to ſuppoſe, that he would take

offence at an attempt to explain a particular or two, the explanation of which he happened to omit.

In the mean time, it ſeems not improper to acquaint the reader, that it was propoſed more than once by the late vice-chancellor, to perſons who were ſuppoſed to have the moſt influence with the aſſertors of this right of appeal, to refer the point in diſpute to the arbitration of the eminent lawyer himſelf; but whatever deference was pretended for the opinion, there was no diſpoſition to ſubmit to the deciſion, even of that conſummate judge. But indeed, why ſhould they *refer* a matter in regard to which, *the univerſity may be almoſt ſaid to be unanimous*[p]. The right of appeal is plain and evident to every man in the univerſity, who is not either vice-chancellor, or head of a college, or a friend to the *cephalocracy* at leaſt; and the aſſertors of it would without doubt have moved the court of king's bench againſt our late magiſtrate, *for rudely and inhumanly wreſting from them this ſacred claim, patronam illam & vindicem libertatis, as a great ancient calls it*[q]; only that they were fully determined, never to ſuffer a point *ſo plain* to be

[p] Opinion, &c. p. 56.
[q] Opinon, &c. p. 62.

be called in queſtion, or one *ſo ſacred* to be pried into, by the licentious tongues and unhallowed eyes of Weſtminſter-hall.

THE reader has already ſeen, that the queen's ſtatutes reſtrain appeals to the *cauſæ forenſes*; and yet *the editor of the opinion* [1] contends, that *it is evident from a MS. of unqueſtioned authority in C. C. C. library, that neither the body of the univerſity, nor the heads themſelves (ſome of them ſuppoſed to be concerned in compiling the ſtatutes) had the leaſt imagination of ſuch reſtraint.* For *not a ſyllable is ſaid againſt the right of appeal itſelf in any caſe; appeals were for the redreſs of wrongs in general, nay, the wrongs they apprehended are even ſpecified, ſuch as puniſhments of a regent in the regent houſe for modeſtly aſking a queſtion, or of a diſputer for modeſtly diſputing; which, if we are to call them cauſes at all, are ſurely cauſes of correction.*

THUS the matter is repreſented, or rather ſhamefully miſrepreſented by him. For the fact is, that the complaint of puniſhing a regent or diſputer, is made by the body againſt the vice-chancellor, as acting in the commiſſion of the peace and not otherwiſe; and is accordingly introduced

[1] p. 29.

troduced with this allegation, that *it was not the first intent of the graunt of justices of the peace, to insult upon masters of arts doing their duty, upon foolish private affections.* And to satisfy the reader of the falshood also of his former suggestion, namely, that *neither the body of the university, nor the heads themselves, had the least imagination of such restraint*, viz. of appeals to civil causes by the queen's statutes; I shall here lay before him a faithful transcript of one of the most remarkable objections of the former, and the answer of the latter thereto.

OBJECTION.

'AND whereas the old statutes give 'that privilege, ut si magistri regentes, vel 'aliquis eorum contra procancellarium 'colluctetur [s], eorum causa per delegatos 'ab academia terminetur, ut omnis timor 'subornationis absit, tam procancellarius, 'quam taliter rebellans discedat; and the 'queen's majesty's injunctions do restrain 'the vice-chancellor, from committing 'any gremials to prison, without the con-'sent of the greater part of masters of 'colleges; the new statutes give the vice-chancellor,

[s] The statute adds, vel alias inobediens extiterit.

'chancellor *abſolute authority* to ſend ma-
'ſters of arts to priſon *at his pleaſure*[†],
'and therefore the firſt word now com-
'monly is, *To the Tolbooth with him*, as by
'diverſe examples is to be proved.'

ANSWER.

'THAT ſtatute, which giveth the chan-
'cellor authority to commit any of them
'to priſon, (is) upon juſt cauſe; eſpecially
'in this licentious time, in the which
'they do delight and glory in breaking the
'godly laws and good orders.'

THE objection here mentioned was one of thoſe which were ſigned by no leſs than *one hundred and ſixty-four regent and non-regent maſters*, who cannot but be ſuppoſed to have been well acquainted with the conſtitution of the univerſity, as well upon the footing of the old ſtatutes, as of thoſe of the queen; and therefore I muſt recommend *it* to the reader's attentive conſideration in the firſt place, and then ſubmit to him in the next, whether it does not amount to a confeſſion of the following important particulars:

1ſt, That

[†] *Judicio ſuo.* See note P p. 23.

1ſt, That in caſes of rebellion and diſobedience to the vice-chancellor, no appeal, properly ſo called, was provided even by the old ſtatutes, but inſtead thereof, the matter was made cognizable by delegates in the firſt inſtance; but that only, when the offender happened to be a [u] regent maſter.

2dly, That theſe caſes, which were cognizable by delegates, only by virtue of the old ſtatutes, were afterwards by the queen's injunctions made cognizable by the vice-chancellor and heads.

And 3dly, That the ſame caſes were at length, by the queen's ſtatutes, made cognizable by the vice-chancellor ſingly, who was thereby inveſted with an autho-

[u] Hence it was obſerved in the *Inquiry*, p. 16. that if this law was even now in force, the benefit of it could not be extended to non-regents; and much leſs ſtill could it be extended to any below the degree of maſter of arts. However, as the caſes of regents, who ſeem once to have been the only members of the ſenate, were formerly thus diſtinguiſhed from thoſe of the reſt of the univerſity; thoſe perſons who have expreſſed a deſire, to have a right of appeal granted to all maſters of arts and others of ſuperior degrees, excluſive of the reſt, inſtead of being charged by their brethren with endeavouring hereby to create a new diſtinction, ought rather to be conſidered as endeavouring to revive an old one.

rity

rity that was *abſolute*, and conſequently not ſubject to any appeal, *to ſend maſters of arts to priſon at his pleaſure.*

As therefore the complaint of the body of the univerſity, entirely proceeded from the power of delegates in theſe caſes being taken away; with what face could the editor of the opinion affirm, that *in the C. C. C. MS. not a ſyllable is ſaid againſt the right of appeal itſelf in any caſe?* But indeed, even ſuch affirmations deſtitute as they are of any ſupport from truth, *are not*, as he himſelf obſerves, *without their uſe. For perſons unacquainted, as the generality of his readers muſt needs be, with the queſtion itſelf, are readily enough inclined to believe, that a perſon ſo aſſured, cannot be ſo entirely ignorant of the merits of it, as in fact he is* [w].

However, ignorant as he is, 'he will [x] 'condeſcend to put the *inquirer* in mind of 'one eſſential defect in his argument, which 'runs through his whole pamphlet. It 'is, that he all along goes on the ſuppo-'ſition,

[w] Opinion, &c. p. 3.

[x] I alſo in return muſt *condeſcend to put the editor of the opinion in mind of one eſſential* miſrepreſentation of the *inquiry, which runs through his whole pamphlet.* For, tho' it is there ſhewn, that our chancellor, tho' not accountable to the univerſity, for the exerciſe of his authority in matters

'ſition, that the expreſs authority of ſta-
'tute, is required to make good the claim
'to appeals. And he therefore very idly
'lays out his whole ſtrength, in attempt-
'ing to prove, that no ſuch expreſs autho-
'rity is to be found, either in the old or
'new ſtatutes [y]. But whether the in-
quirer in ſuppoſing this, or the editor of
the opinion in ſuppoſing the contrary, is
guilty of *an unhappy blunder* [z], as he calls it,
let the reader judge. For he might have
had the *condeſcenſion* to have obſerved, that
the *inquirer* was not treating of appeals in
general, but of one claimed from the head
of a community to the body: an appeal
ſo very unlike and diſſimilar to thoſe that
are warranted by the civil or even canon
law, and ſo utterly without a parallel in
any other corporate body, that it could
only be warranted by the ſtatutes and con-
ſtitutions peculiar to this; and ſo the [a] emi-
nent lawer himſelf expreſsly affirms. This
author may indeed take it into his head, to

ters of diſcipline, is ſo to the crown; yet he has thought fit, not only not to take the leaſt notice of this, (it being a particular, which he was equally unwilling to admit, and unable to confute) but even to repreſent the *inquirer* as an utter enemy to all appeals: no appeal, or none *he* likes, being in his eſtimation much the ſame.

[y] Opinion, &c. p. 37.

[z] Opinion, &c. p. 39.

[a] See note [x], p. 13.

ſuppoſe

ſuppoſe that juriſdiction to be eccleſiaſtical, which is neither directed by eccleſiaſtical laws, nor can inflict one eccleſiaſtical cenſure, and may then proceed to infer a right of appeal to the univerſity from the chancellor, as *their official*; but every man who knows better (and that every man muſt, who underſtands any thing of the matter at all) will infer the direct contrary from the very ſame premiſſes, and treat *ſuch a reaſoner* with the ſcorn and deriſion he ſo juſtly deſerves.

HENCE, from thoſe very principles, upon which *this author* attempts to eſtabliſh a right of appeal from the chancellor to the univerſity, it neceſſarily follows that there would be none. Such a right might indeed be created by the authority of an expreſs ſtatute, as in civil cauſes it actually was; but no ſuch warrant can be pleaded for it, by this *author's* own confeſſion, in matters of diſcipline. *To the conſtitution of the univerſity* therefore, conſidered even as eccleſiaſtical, *this right* could never be *eſſential*, as he affirms it *is*; and *authorized by immemorial preſcription* [b], as he calls it, (for not knowing the meaning of preſcription, he fancied

 the

[b] Opinion, &c. p. 40.

the epithet immemorial would give it an additional ſtrength), it clearly and undoubtedly is not. For, not ſo much as one inſtance ever was or can be given, of an appeal in a matter of diſcipline being admitted before the year 1725, tho' many have been produced, in which they have been expreſsly denied, [c] one of which is even forty years more ancient than the date of our preſent ſtatutes. Nay, in thoſe very queries which he himſelf has extolled as *proper concerning this very point* [d], a [e] preſcription of 200 years is urged againſt theſe appeals; notwithſtanding which, *this author*, tho' he has not been able to produce a ſingle precedent in their favour, affirms with his uſual confidence, *that there has been a continued immemorial practice of appealing* [f], viz. in matters of diſcipline.

But, if it were true in fact, ſays [g] he, *that no appeals had been heard between* 1570 *and* 1725, *in cauſes of correction and cenſure, yet this would not affect the right.* If the right was founded on expreſs ſtatute, perhaps

[c] Inquiry, p. 18.
[d] Opinion, &c. p. 20.
[e] Opinion, &c. p. 34.
[f] Opinion, &c. p. 38.
[g] Opinion, &c. p. 31.

haps it might not. But as he has had *the goodneſs* (to uſe his own[h] words) *to inform me at once, that no body, who underſtood the matter in debate, ever pretended to found the right of appeal on expreſs ſtatute*; the leaſt that I can do in return will be to inform him, that as it is true in fact, tho' he has put it only hypothetically, that no ſuch appeals were heard, not only from 1570, but even from the foundation of the univerſity, to 1725; and, as it is thus fully admitted, that a right to ſuch appeals is not founded on expreſs ſtatute; the wiſeſt thing he could do, would be not to ſay one word more about it: for any lawyer, nay even any attorney in the kingdom will tell him, that there cannot be any ſhadow of foundation for a right, a grant of which can neither be ſhewn, nor the exerciſe of it proved for time immemorial.

In return for this conceſſion, the conſequences of which he had not the ſenſe to foreſee, he thought *he had reaſon to expect the inquirer's good leave to expoſtulate with him pretty freely*[i]. But whatever freedom he might think himſelf authorized to uſe in his expoſtulations, they ought at

[h] Opinion, &c. p. 38.
[i] Opinion, &c. p. 39.

leaſt to have been reſtrained within the bounds of truth. Has the *inquirer* ſaid, that *the*[k] *members of the ſenate itſelf are a company of factious, diſorderly, and licentious boys*[l]? No; but *it is what he would covertly ſignify* (for a covert ſignification however forced muſt be made to ſupply the defect of proof,) *under an impertinent ſolicitude for the honour of the ſupreme magiſtrate*[m]; and *therefore* is every appellation of abuſe to be heaped upon him, and the fouleſt language to be deemed the pure effects and overflowings of zeal, for the reputation of the body of the univerſity.

' RARE

[k] In like manner he is charged (Opinion, &c. p. 4.) with *conceiving of the members of the univerſity ſenate, as the ſchool-boys of the place*; that is, with conceiving of himſelf as a ſchool-boy, for he happens to be one of the number; and this for no other reaſon, than becauſe he has quoted a paſſage from Mr. *Tabor*, wherein he who was then grown grey in the ſervice of the univerſity, calls the younger members of the ſenate *his young maſters of the regent houſe*; which he ſurely might do without affronting them, as *young regent maſters*, or *young maſters of the regent houſe*, was the uſual ſtile in which they were mentioned. And yet bad as the reaſon is, it is full as good as thoſe he has for accuſing the *inquirer*, with repreſenting him and his aſſociating brethren as *liſted in a vile cabal to diſhonour, revile, and abuſe their chancellor himſelf*, p. 55; and with *thinking heads of colleges have a right to govern abſolutely*, p. 4.

[l] Opinion, &c. p. 43.

[m] Opinion, &c. p. 43.

'RARE indeed is the felicity of the 'times in which we live!' The *inquirer*, it ſeems, may not be ſolicitous for the honour of the ſupreme magiſtrate; for *what he would covertly ſignify thereby* is *outrageouſly inſolent*, and *an abuſe of the body of the univerſity, almoſt all of whom are clergymen*[n], moſt of them *fellows of colleges*, and *many of them tutors, whoſe ſobriety and good behaviour have recommended them to places of truſt and profit in their reſpective colleges*[o]; but at the ſame time the *editor of the opinion* may openly, and not by any ſuch *covert ſignification*, make as free as he pleaſes with the characters of *other members of the ſenate*, to whom at leaſt the ſame degree of deference and reſpect is due. He may ſneer at theſe, as *the great lawgivers* of the univerſity, *the ſovereign guides of youth*, who at the ſame time *delight to wrap themſelves up in balmy eaſe*, and *devolve the care of government on other ſhoulders*[p]; he may ſpeak of them, as *without perhaps one ſingle*[q] *merit to juſtify their claim to that honour* and reſpect, which as *the chancellor's repreſentatives* is given them by ſtatute, and which

[n] Opinion, &c. p. 43.
[o] Opinion, &c. p. 45.
[p] Opinion, &c. p. 47.
[q] Opinion, &c. p. 60.

which he himſelf has *ſworn* to pay them; and may charge them with *paltry projects*, with *low and ſelfiſh deſigns*[r], nay even with that *of making the new laws the inſtruments of their own tyranny*[s]; tho' almoſt all of theſe are *clergymen*, and have been *tutors and fellows of colleges*, and conſequently, by his own account, have only forfeited their title to the reſpect due to perſons in thoſe ſtations, by being raiſed to a higher, and that too, for much the moſt part, by the fellows of their reſpective ſocieties, to whoſe judgments, as well as characters, he at leaſt ought to have paid a greater regard.

In like manner, the *grace, which the aſſertors of the right of appeal thought fit to propoſe*, may not be inquired into, for that would be *to inſult ſo conſiderable a body*[t]; who at the ſame time were guilty of no kind of *inſult*, or even *indecency* towards the vice-chancellor. For all they meant was *but* to arraign and call him to a ſtrict account for his conduct; and therefore they *only* modeſtly propoſed to him, that, as there was a diverſity of ſentiments about a right of appeal, as he was adviſed that there was no ſuch right, and they were perſuaded that

[r] Opinion, &c. p. 60.
[s] Opinion, &c. p. 57.
[t] Opinion, &c. p. 39.

that there was, he would pleaſe to concur in enacting, that they were entirely in the right, and he and his two eminent lawyers entirely in the wrong. Yet *modeſt* as the propoſal was, it happened not to be complied with; and therefore, as this *grace* never received the ſanction of the ſenate, I ſee no reaſon, why it ſhould be eſteemed ſo *ſacred*, that its contents might not be inquired into. Had it really contained nothing, but what was warranted by the conſtitution of the univerſity, it could never have ſuffered from the *inquirer's* examination; and indeed I am much miſtaken, if the diſpleaſure expreſſed againſt the objections made to it, proceeded from any thing elſe, than a conſciouſneſs of their weight. *The aſſertors of the right of appeal*, it ſeems, *thought fit to propoſe a grace, in order to refer the deciſion of this point to the arbitration of the ſenate* [u]. But then, who I pray were the aſſertors of this right, and who the arbitrators made choice of? Why truly the univerſity, as he tells us in this ſame page, were the claimants of this right; and they alſo, as he gives us to underſtand from his very title page, are the ſame as the ſenate. Hence then, the aſſertors or claimants of the

[u] Opinion, &c. p. 39.

the right of appeal, and thoſe to whoſe arbitration it was to have been referred, however artfully diſtinguiſhed from each other in name, were in fact the ſame perſons; with what face therefore, could the *inquirer go on to inſult ſo conſiderable a body of men*, for ONLY *thinking fit to refer the deciſion* of the validity of the right they claimed, *to their own arbitration*. It muſt be confeſſed indeed, that in any other place it would have been *thought fit*, that the arbitrators ſhould have had no intereſt in the point they were to determine; however it was *thought fit here*, that they ſhould: and tho' the law of the land is ſo ſqueamiſh, as not to ſuffer the members to be ſo much as witneſſes, where the intereſt of a body is greatly concerned; yet ſome wiſer academical legiſlators may not only *think fit*, to make the univerſity judges as well as witneſſes in their own cauſe, but even undertake to defend it when they have done.

As to the grace itſelf, this [w] *author* tells us, *the ſubſtance of what it propoſed was to to this effect*: 'that the right of appeal from 'the ſentence of the vice-chancellor to the 'univerſity in all caſes, ſhould be *confirmed* 'to

[w] Opinion, &c. p. 40.

'to every member of the univerſity; 'but that this right, with regard to per-'ſons in ſtatu pupillari[x], ſhould be exerciſed 'only by the tutor of each perſon, inter-'poſing in his name.' The reader has already ſeen, that *this author* is ſo little qualified to explain the ſtatutes of the univerſity, that he does not even underſtand ſo much as the title of one of the eaſieſt of them: and if he will but caſt his eyes to the bottom of the page, he will now ſee, that he is quite as unable to conſtrue this very *grace*[y]. The

[x] *A Proviſion of this kind,* ſays he p. 53, *was all the reſtriction upon the liberty of appealing, which the vice-chancellor himſelf wiſhed to ſee made to it. For this excellent perſon was ſo much convinced of the propriety and expediency of this claim in general, that he very frankly profeſſed his approbation of it:* viz. by refuſing Mr. A——l's appeal; by acquieſcing in the opinions of the two eminent lawyers, who declared the claim of an appeal in matters of diſcipline to be groundleſs; by expreſſing on all occaſions an utter averſion to give to perſons in ſtatu pupillari at leaſt, a licence of appealing by themſelves or others; by declining for ſome time ſo much as to *read* this very *grace* in the caput; and laſtly by declaring, to the perſon who was ſent to acquaint him with the intention of offering *it* again, that he would *read* it if required, but was fully determined to *ſtop it.*

[y] Cum graviſſimæ ſæpius oboriantur diſcordiæ in academia noſtra de rebus ad appellationes pertinentibus; quo melius hujuſmodi diſcordiæ tollantur in futurum, placeat vobis, ut auctoritate veſtra ſanciatur, jus appellandi ad univer-

The words *jus appellandi competere* are rendered by him, *that the right of appeal ſhould be confirmed*, tho' no ſuch ſenſe of the word *competere* is warranted by the *modern dictionaries*, whoſe authority he ſpeaks of elſewhere as *ſo convincing*; and tho', even the *ſchool-boy*, whoſe aſſiſtance he made uſe of on a former occaſion, would have been juſtly intitled to a whipping for ſuch a blunder. And at the ſame time, that his want of honeſty might keep exact pace with his want of knowledge, not the leaſt mention is made of the appeal *ab omni gravamine utcunque illato*, tho' it is certainly one of the moſt *ſubſtantial* parts of that *grace*,

univerſitatem, a ſententia qualibet domini procancellarii, & ab omni gravamine ab eodem utcunque illato, *competere* unicuique membro academiæ. Ita tamen, ut nemini qui ſit in ſtatu pupillari, & infra gradum baccalaureatûs in artibus, liceat appellare per ſe; ſed tutoribus ſingulis concedatur licentia appellationem interponendi & proſequendi nomine pupillorum. The *grace* offered the 23d of November laſt, had the ſame preamble, with the difference only of obortæ ſint inſtead of oboriantur; but the enacting clauſe ran thus: Placeat vobis, ut auctoritate veſtra ſanciatur, jus appellandi a domino procancellario ad univerſitatem *competere* unicuique membro academiæ, in omnibus cauſis tam ex officio quam ad inſtantiam partis, a gravamine etiam quocunque ſive extra judicium ſive in judicio a domino procancellario illato; ita tamen ut nemo in ſtatu pupillari appellationem hujuſmodi interponat per ſe, ſed tutori ejus concedatur licentia appellationem interponendi & proſequendi nomine pupilli.

grace, the ſubſtance of which he pretends to lay before his readers.

BEFORE the [z] *inquirer* had expoſed the weakneſs of the arguments of one Mr. B—, who urged, *that the univerſity thought formerly that they had a right, and did accordingly exerciſe a power, of altering the queen's ſtatutes*, inſinuating at the ſame time, that *the ſame power might be exerciſed now*; it is well known, how little ſome people ſcrupled to affirm, that this grace *did and might create* a right of appeal in matters of diſcipline. The ſtile however is now altered; and even this author's aſking, *where was the irregularity of the ſenate's preſuming to confirm by their own authority, a right eſſential to their conſtitution* [a], ſeems to amount to a confeſſion, that it would be *irregular* at leaſt, *to preſume to give* themſelves any *new rights*. And yet the appeal even à ſententia, in matters of diſcipline, muſt for the reaſons already given be conſidered as a *new right*; and that the appeal à gravamine is ſo, is beyond almoſt all poſſibility of doubt. For when *this author* affirms, that *the appeal ab omni gravamine utcunque illato, is nothing but reaſonable, as the ſtatutes make*

[z] Inquiry, p. 52, &c.
[a] Opinion, &c. p. 39.

no diſtinction, and the practice, as well as law of the univerſity, equally authorizes appeals in every caſe [b], his ignorance and confidence are equally the ſubjects of our amazement. For, is it not as plain as words can make it, that the ſtatutes give an appeal, even in civil cauſes, from a ſentence, and from that only? Did not the [c] *inquirer* ſhew this to have been the opinion even of delegates, ſo long ago as the year 1596? Is there more than one ſingle appeal à gravamine to be found upon record, and that only in the year 1725? And did not the delegates, before whom it was brought, declare, that *the whole power and juriſdiction of delegates was founded on the ſtatute de cauſis forenſibus*, and that ſuch appeal was unprecedented, as well as unſtatutable, and did they not therefore diſmiſs it the court [d]? What muſt we then conclude from this author's aſſertion, that *the appeal ab omni gravamine utcunque illato, is nothing but reaſonable; as the ſtatutes make no diſtinction, and the practice, as well as law of the univerſity, equally authorizes appeals in every caſe?* What indeed? But either, that he has not the leaſt ſenſe of ſhame or regard to truth; or that he only meant

[b] Opinion, &c. p. 41.
[c] Inquiry, p. 63.
[d] Inquiry, p. 42.

meant, that the practice, as well as law of the univerſity, *do therefore equally authorize* appeals à ſententia & ab omni gravamine utcunque illato, in matters of diſcipline; becauſe in truth and reality neither of them *does at all authorize* any ſuch appeals.

As therefore this *grace* had a tendency to alter the conſtitution of the univerſity, and to *create* rights, not only unknown to the ſtatutes, but even [e] contrary to and inconſiſtent with them; it was equally unfit, to be offered on the part of the *body*, and to be received and countenanced by the magiſtrate at their *head*: and as it's effect (if it legally could have had any) would have been, as the *inquirer* alledged, a diminution of an authority, which is only veſted in the vice-chancellor, as the repreſentative and locum tenens of the chancellor himſelf [f]; let the reader reconcile if he can, the per-

[e] The laſt clauſe of the 42d ſtatute expreſsly prohibits all ſuch alterations or innovations.

[f] To this the *editor of the opinion anſwers boldly*, p. 58. (for his aſſurance never fails, tho' his knowledge often does,) *that they are therefore earneſt in their endeavours to leſſen this authority*,——becauſe *the perſon, who by our conſtitution is now veſted with it, is, and muſt be a very imperfect repreſentative of the chancellor*. But however im-

perſiſting to offer, and even endeavouring to carry by a kind of [g] violence, ſuch a *grace* as this, with the reſolution taken at their firſt meeting, to aſſert the right of appeal in ſuch a manner only, as was conſiſtent with the ſtatutes, and with the deference and reſpect due to his grace the chancellor. Even with all the aſſiſtance *this author* has endeavoured to give me, I muſt confeſs myſelf ſtill unable to reconcile

imperfect a repreſentative, the vice-chancellor for the time being may be of a duke of Somerſet or Newcaſtle, he is a perfect one of the chancellor of the univerſity at leaſt, and the ſtatutes declare him to be ſo; and therefore, when *this author* laughs at the notion, *that the ſenate would make no diſtinction, between the ſupreme magiſtrate and his repreſentative*, he might juſt as well have done ſo, at the oath which he and they have all taken, viz. cancellario procancellarioque———quamdiu in hac republica degam, comiter obtemperabo. But indeed, if he had not forgot *that*, he would ſcarce have founded the honour and reſpect due to the *chancellor*, upon his *illuſtrious rank ana dignity, his eminent virtues, and ſervices to the univerſity*; for on all theſe accounts the ſame honour and reſpect would have been due from us to *his grace the duke of Newcaſtle*, whether he had been *chancellor* of the univerſity, or not.

[g] Namely, by endeavouring to ſtop all degrees, till the vice-chancellor ſhould give his conſent to this favourite *grace* of theirs; for, however unfit they thought it, that the ſupreme magiſtrate of the univerſity ſhould ſuſpend one perſon ab omni gradu ſuſcepto *with reaſon*, they thought it very fit, that they ſhould ſuſpend all perſons indiſcriminately ab omnibus gradibus ſuſcipiendis *without reaſon*: but this attempt of theirs was fruſtrated by a majority of 71 to 29.

cile it accordingly; nor am I leſs at a loſs, in regard to the *conſiſtence* of ſome other [h] particulars, which he tells me almoſt in the ſame breath. For, if he who profeſſes, *on every occaſion to have teſtified the ſincereſt honour for the chancellor*, ſhould prove to be one of *thoſe choſen few*, who engaged the earlieſt to oppoſe his advancement to that ſtation, and even, when all oppoſition was vain, refuſed to pay him the uſual compliment at his election, by giving an explicit conſent thereto; if he, who pretends *to venerate him, as the protector and patron of the univerſity*, has endeavoured to degrade him into a little paltry [i] *official*, to diveſt

[h] Opinion, &c. p. 57.

[i] The reader has already ſeen (in the note p. 12) that the chancellor was, 100 years ago, and had been, *of* what was then called *ancient time*, conſidered in a higher light than that of an *official*; (tho' even as *ſuch*, he would not have been accountable to the univerſity for the exerciſe of his authority, as *this author* ignorantly ſuppoſes.) And I muſt now inform him that tho' what Dr. Andrew ſaid is undoubtedly true, if appeals to the univerſity in matters of diſcipline had been warranted by expreſs ſtatute; yet, as it is granted that they are not, it is far from being ſo; either on the footing of the civil or canon law. For by the conſtitution of the emperor Frederick (cod. I. 4. tit. 13.) the cauſes of ſcholars are to be determined by *their ſuperior*, or by the biſhop of the place, and by no other judge; and it is plain from the act of the 25th of Henry the eighth, chapter the 19th, that as the univerſity was formerly exempted from archi-epiſcopal as well

diveſt him of the authority eſſential to his ſtation, and to render him accountable for the uſe of it, to the very perſons over whom it is exerciſed; if the ſame perſon, who declares his readineſs, *humbly to co-operate with him, to the attainment of thoſe good ends, which it is his ſole endeavour to promote*, did in fact oppoſe *the attainment of thoſe good ends, which it was his ſole endeavour to promote*, and which alone he particularly and affectionately recommended; nay even continued his oppoſition to them, after all the pretended apprehenſions of any [k] encroachment in regard to appeals were effectually removed; if, I ſay, the actions of *a certain perſon* ſhould be found to be ſo much at variance with his profeſſions, *tho' (to uſe my Lord Bacon's words on a like occaſion) I obſerve in his book many gloſſes, whereby the man would inſinuate himſelf into his favour*; he muſt not think, *the chancellor is to*

well as epiſcopal juriſdiction, ſuppoſing our chancellor, as ordinary, or even as *official* only, empowered to inflict eccleſiaſtical cenſures, immediate appeals would lie from his ſentences to the king in chancery, and to him only.

[k] And yet, this author ſays p. 57, *that the principal reaſon which induced the univerſity* (by which he generally means no more than himſelf and his good friends,) *to oppoſe the regulations, was the juſt apprehenſion they were under, of an encroachment on this very right.*

to be abuſed by this thin pretence of reſpect, or that true greatneſs is to be taken by this mere outſide of an officious and FALSE compliment [l].

But to return to the *grace* itſelf. The [m] *inquirer* could not help expreſſing his diſlike at the latter part of it, becauſe a very great diſcretionary power was thereby to be lodged in the tutor, at the ſame time that it was thought dangerous, to truſt the ſupreme magiſtrate of the univerſity with the leaſt. This objection appears to the *editor of the opinion* of no weight: and then comes the reaſon, becauſe *the judge who paſſed the ſentence, was therefore concerned to ſupport it*; whereas the tutor is *an* [n] *indifferent perſon, who had no concern at*

[l] Opinion, &c. p. 61.

[m] Inquiry p. 65.

[n] 'May not (ſays the author of *Conſiderations on the late regulations*, whoſe candor even the *editor of the opinion* acknowledges, and whoſe arguments no oppoſer of the regulations has ventured to controvert,) 'the *intimate connections* which the tutors have with the young ſtudents, 'ſometimes tempt them to excuſe or extenuate their offences? — may they not diſpoſe them to ward off part of 'the puniſhment on ſome occaſions? — may not this diſpoſition be ſtronger, if they have ſome degree of friendſhip and acquaintance with the families, to which they 'belong? and ſtronger ſtill, if they have connections of 'intereſt with or expectation of ſervice from thoſe families? I ſpeak not this at random, or from ſuſpicion only: 'I am much miſtaken in my obſervations, if I have not 'ſeen

at all in it [9]. This is the firſt time, I believe, that a tutor who was to interpoſe for his pupil was eſteemed an *indifferent perſon*: and beſides, if *he would be obliged, by a regard to his own authority and character, and by the religion of an oath, to proceed with all imaginable caution, in adviſing him* to appeal; it is no very unreaſonable ſuppoſition, that the magiſtrate would proceed with as great caution in giving ſentence, and would have as great a regard to his own authority and character, and to the *religion of his oath of office*. But this *author* is one of thoſe, who never can ſee any reaſon, however obvious, that happens to make againſt themſelves. In the mean time, every paragraph of the *inquiry*, which he does not like, or does not chuſe to underſtand, is perfectly *ſhocking* to him; and to render it as much ſo as poſſible to his reader, he takes all imaginable pains to repreſent it in the moſt hideous

' ſeen this ſometimes done: and I mention it here to ſhew, ' that ſuch who are entirely free from theſe *private con-* ' *nections*, and have nothing, as far as appears, to deter- ' mine their publick conduct, but their regard to the credit ' and flouriſhing ſtate of the univerſity in general, may on ' theſe accounts be qualified to judge full as impartial- ' ly, &c.

[9] Opinion, &c. p. 52.

deous and frightful form. Thus he tells us, *the inquirer is pleaſed to make no account of the obligation of an oath* [p]. A heavy charge indeed! And whence does the proof of it ariſe? Why from his ſaying, 'that 'tho' oaths were exacted in order to pre-'vent the frequency of appeals, viz. in 'civil cauſes, they by no means had their 'proper effect, the ſame number having 'been commenced for the three years next 'after this regulation, as in that towards 'the cloſe of which it was firſt made.' *Now any other man would, ſurely, have inferred from hence, that therefore the appeals made were not without good reaſon. Not ſo the inquirer. He is of another ſpirit. Rather than give any quarter to appeals, let every tutor in the univerſity be an abandoned perjured villain* [q].

'HERE then we have all the venom of 'his heart injected into one malignant 'paragraph [r];' and therefore let us now ſee, whether amidſt ſo much acrimony, we can diſcover a due proportion of truth. *Any other man would, ſurely, have inferred,*

[p] Opinion, &c. p. 52.
[q] Opinion, &c. p. 52.
[r] Opinion, &c. p. 55.

that the appeals made were not without good reaſon, becauſe the appellants acted under the obligation of an oath. But then, was not the ſentence, from which they appealed, given under the ſame obligation? Well but according to him, either the judge or the appellant in each of theſe cauſes muſt have been *an abandoned perjured villain*; and *that* muſt not be ſuppoſed of the latter at leaſt. Whence it follows, that if only the vice-chancellor had been ſuppoſed *an abandoned perjured villain*, no offence would have been taken, and no harm done.

THUS the matter ſtands in the light this *author* conſiders it; and becauſe the *inquirer* will not view it in the ſame light, he is charged, *with making no account of the obligation of an oath*, and with ſuppoſing *every tutor in the univerſity an abandoned perjured villain*. But what a compoſition of ignorance and malice is here? Is every judge *perjured*, who errs in his ſentence; or every appellant, who happens to believe in his conſcience, that his claim is better than it really is? A ſhocking reflection *this*, upon the conduct of thoſe legiſlators, who have bound each of them to act, under

under the moſt ſacred of all obligations! 'But in very tenderneſs to this unhappy 'writer, whoever he be, I forbear to 'preſs time farther on ſuch a ſubject[s].

'But to return once more to the grace 'itſelf, from which this reviler's treatment 'has a little diverted me[t].' The reader has ſeen, that it was calculated to eſtabliſh appeals, not only à ſententia, but ab omni gravamine *utcunque illato*; ſo that a latitude of appealing would have been derived from it, beyond what is permitted by either the civil or [u] canon law. It would indeed be hard to ſay, what might not be eſteemed a gravamen of one kind or another, upon the footing of ſuch a grace; and as an inſtance was given in the *inquiry* of Mr. D—, a perſon of character and great popularity, arraigning the vice-chancellor before delegates on an occaſion ſlight enough, it ſurely was

[s] Opinion, &c. p. 52.

[t] Opinion, &c. p. 48.

[u] The canon law, according to Corvinus, was reformed according to the rule of the civil law, and appeals permitted from ſuch an interlocutory ſentence only, as had the force of a definitive one, or was attended with ſuch a gravamen, as could not be repaired by appealing from a definitive one. The ſame author mentions alſo the following perſons as deprived of the benefit of appealing even by the canon law; viz. condemnatus ob contumaciam veram, — ob manifeſtum crimem, — de crimine confeſſus & convictus.

was not very unreaſonable to ſuppoſe, that other inſtances of a ſimilar nature might happen; eſpecially, when the right of appeal ſhould be thus extended, beyond any known and certain bounds [w]. *Yet why*, ſays *this author*, *ſhould the inquirer throw himſelf into this unſeaſonable panic, when all frivolous appeals are expreſsly provided againſt, by a conſiderable pecuniary caution*, viz. amounting to the enormous ſum of *twenty ſhillings*; and when *the delegates themſelves are, in effect, of the ſupreme magiſtrate's own appointment*; for *delegates are nominated by the caput, and the caput is, in effect, appointed by the vice-chancellor and heads of colleges* [x].

WHO it is, that *is ſo far from being converſant in the ſtatutes of the univerſity, that he*

[w] THE author of *the practice of ſpiritual courts*, after telling his readers, that deferring to pronounce ſentence, allowing too ſhort a delay or time, and denying audience to any one, are *grievances*, adds, that *to enumerate all grievances, is not within the bounds of any man's knowledge or foreſight*: ſo that either of the *graces* abovementioned would have cut out plenty of work for delegates, and have left a mere ſhadow of authority to the ſupreme magiſtrate of the univerſity.

[x] Opinion, &c. p. 41.

he [y] *blunders in every attempt to explain the very eaſieſt of them* [z], the reader has already ſeen in part, and will now have an opportunity of ſeeing more at large, by only turning to the 41ſt and 48th ſtatutes. For there he will find, that the power of nominating delegates, viz. in civil cauſes, is veſted in the *two proctors* jointly with the five members of the *caput*, and that the congregation of regents and non-regents may reject any or all of the perſons ſo nominated, and ſo have them changed three ſeveral times; whereas *the chief magiſtrate, of whoſe own appointment*, as he ſays, *theſe delegates in effect are*, has no ſhare whatever in appointing them. He will find alſo, that each of the two proctors (who are not even *in effect* appointed by the vice-chancellor and heads) have an equal ſhare, in the nomination of the *caput*, with the vice-chancellor himſelf; and that all doctors, and the ſcrutators, have the ſame power in the election of them, as the heads of colleges; of which as ſeveral are generally abſent, it would, I believe, be difficult to produce one inſtance, wherein they

[y] SUCH indeed is this author's propenſity to blundering, that it breaks out in his very title page, where he ſuppoſes *a right of appeal to the ſenate*, inſtead of the univerſity.

[z] Opinion, &c. p. 2.

they were not conſiderably outnumbered by the other electors. And now let the reader judge, whether *the caput is in effect appointed by the vice-chancellor and heads of colleges.*

But the inſinuation, viz. that the vice-chancellor might poſſibly be arraigned before delegates, upon no very important occaſions, *is ſtill more impudent, than his apprehenſions are groundleſs* [a]. That is, it is *impudent* in the *inquirer* to inſinuate, that what *actually did happen* in the caſe of Mr. D——, *poſſibly may happen again*; tho' the clauſe, ab omni gravamine utcunque illato, has both a tendency *to make it happen*, and to *warrant it* whenever it does.

In like manner the *inquirer* may not inſinuate, 'that the perſon who appre-
'hends himſelf to be aggrieved, may hap-
'pen to be a member of the ſenate, and,
'as ſuch, may poſſibly bear with indigna-
'tion, the thought of having any part of
'his conduct judicially animadverted up-
'on; that his particular friends and ac-
'quaintance, may poſſibly think the ſame
'in his caſe; and that all the advocates
'for, and the ſame warm aſſerters of in-
'dependency,

[a] Opinion, &c. p. 42.

'dependency, will be ſure to think ſo in 'every caſe [b].' For tho' Mr. F— not many weeks before, had expreſſed his indignation in open court, that *maſters of arts, and fellows of colleges ſhould be thus cited*; had ſaid, that, *to put maſters of arts on the ſame footing with under graduates, to put them under the ſame reſtraint, — this, Mr. vice-chancellor, is to level all degrees*; and had *inſiſted, that the honour of the ſenate ought to be ſupported, but if the members of it were to be brought into court* [c], *&c, &c:* tho' all this, I ſay, had been alledged before the vice-chancellor and heads in open court, nay had even been publiſhed to all the world; and tho' the *inquirer* by reſiding in the univerſity, had an opportunity of knowing, that the ſame ſentiments were avowed, by ſeveral who had connections with Mr. F-—, and by ſeveral alſo who had not; yet to ſuppoſe ſo much as *the poſſibility of this*, is declared to be *outrageouſly inſolent*, and an *abuſe of the body of the univerſity*; not one of whom, it ſeems, could *poſſibly* be guilty of any ſort of inſolence in *only avowing* ſuch ſentiments, tho' to ſuppoſe the *poſſibility*

[b] Inquiry, p. 11.
[c] See the authentick narrative.

of their *having them is ſomething ſo outrageouſly inſolent* in the *inquirer*, that *this mirror of all candour would have been cautious of charging it upon him, if he had not expreſſed himſelf in terms too clear to be miſtaken. For he has the aſſurance to advance in ſo many words*, that 'if 'the perſon who apprehends himſelf 'aggrieved may happen to be a member 'of the ſenate [d], &c, &c.'

But granting that ſome ſlight, nay that ſome conſiderable inconveniences might ariſe from it; — ſhould not the inquirer have conſidered, that a right of appeal is one of the moſt important and valuable rights, which mankind enjoy in ſociety [e]? Suppoſe it is; is it therefore to be directed from the head of an univerſity to the body? If the *inquirer* has ſhewn, that thither it neither ought, nor is, by our conſtitution or ſtatutes, directed in matters of diſcipline, has he not ſhewn alſo, that it both may and ought to be directed [f] elſewhere? In ſhort, the *head*, and every ſubordinate member of this univerſity, is clearly ſubject to the viſitatorial

[d] Opinion, &c. p. 43.
[e] Opinion, &c. p. 62.
[f] See the inquiry, p. 44.

viſitatorial power of the crown; to that tribunal, and to that only, a vice-chancellor is and may be made accountable; to that, however unwillingly, Dr. Lambert in the year 1727 was obliged to ſubmit; and to that muſt every other vice-chancellor ſubmit likewiſe.

In the mean time I would not have this *author*, and much leſs his readers, imagine, that a right of appeal *of any kind* is ſo *eſſential to the very being of every ſociety*, as he [g] inſinuates. For, tho' an appeal is called, even by ſome civilians, *a ſpecies of natural defence*, (which by the way is full as good a definition of a box on the ear,) it is ſuch a one, as may not only be abridged, but even [h] taken away; and is actually taken

[g] Opinion, &c. p. 62.

[h] Thus in the caſe of Philips and Bury, lord chief juſtice Holt declares; 'the queſtion is not, what is 'reaſonable for the founder to do; but what he has 'done, upon peruſal of the ſtatutes. — His will is his 'reaſon in diſpoſing and ordering his own; it is not 'in our power to take away this authority from him '(the viſitor) becauſe we think it unreaſonable. — As 'to the matter of there being no appeal from an ar-'bitrary ſentence; it is true the caſe is the harder, 'becauſe the party is concluded by one judgment; 'but it doth not leſſen the validity of the ſentence, 'nor

taken away accordingly in every collegiate foundation, and the firſt ſentence rendered abſolutely concluſive. In foreign univerſities alſo, and even in our ſiſter univerſity of Oxford, no appeal is permitted in matters of diſcipline; for what reaſons therefore are we to imagine, that it *ought* to be permitted here?

ONE that knows little more of [i] Ulpian than his name, may take it into his head to ſuppoſe, that when that great civilian was pleading for the neceſſity of

' nor doth it any way prove, that you ſhall find out ' ſome way to examine this matter at law in a judicial ' proceeding. — And I do not know any authority of ' law, that makes out the ſentence to be the weaker, ' becauſe he is barred of an appeal.

SEE *reports of caſes determined by Sir John Holt.*

THE character of this conſummate judge (ſays the editor of theſe reports) is more highly eſteemed among *the gentlemen of the long robe*, than we ſhall preſume to deſcribe. If the uſe of the ſame aukward expreſſion, even with the addition of the epithet *learned*, continues to offend this *critical advocate for appeals* (ſee p. 6.) I am afraid, that not only this gentleman of the long robe, but even lord chancellor Clarendon himſelf, muſt alſo incur his cenſures; for he, at leaſt as aukwardly, calls lord keeper Coventrye a *ſon of the robe*, his father having been a judge.

[i] How little the *editor of the opinion* knows of the *digeſt*, tho' to ſhew his learning he pretends to quote it, is plain from this very inſtance. For tho' he refers us p. 63. for this paſſage in Ulpian to the firſt book of the digeſt, it happens to be found only in the forty ninth.

of appeals, it was with a view of having them admitted in univerſities as well as elſewhere; but I have one ſmall reaſon for ſuppoſing the contrary, namely, becauſe no ſuch foundation had ſo much as a being in his time. When they had, the emperor Frederick the firſt, by a famous conſtitution, which he ordered to be inſerted in the [k] code, where it ſtands to this day, directed; that the *ſuperior* of every univerſity, or the biſhop of the place, according as the ſcholar made his option, ſhould be the *only judge*, and conſequently ſhould judge without appeal, in all cauſes as well criminal as civil. Had therefore the *editor of the opinion been as converſant in the civil law, as an inquirer into ſuch a queſtion ſhould have been* [l]; he would never have had recourſe to the authority of Ulpian, in oppoſition to that of an imperial conſtitution; or have been fooliſh enough to imagine, or at leaſt to ſay, that the aſſertors of a right of appeal in matters of diſcipline from the head of an univerſity to the body, which is totally unlike any appeal of which

[k] L. 4. tit. 13.
[l] Opinion, &c. p. 62.

which this ancient lawyer ever ſpoke, *go on his principles at this day*[m].

To talk further on theſe matters to a perſon, who appears ſo wholly ignorant, were a vain waſte of time; and to take the pains of confuting particular objections, founded on that ignorance, ſtill vainer[n]: I ſhall therefore take notice only of two other particulars, which occur in his two laſt pages.

Of what conſequence the inquirer may chance to be in his political capacity, it is impoſſible for him to ſay; but if he is of any, and ſhould proceed in theſe inquiries, he ſhould go near to apprehend, that the houſe of commons itſelf might take umbrage at them; for (yes, for ſome notable reaſon without doubt) *the riſe of that great part of our conſtitution is not uſually,* HE THINKS, *carried higher than the point, from which the right of appeal hath here been deduced*[o]. So then, as he was unable to ſay what the *inquirer's* political capacity might be, he was determined at leaſt to give his readers ſome ſpecimen of his own. For who they

[m] Opinion, &c. p. 63.
[n] Opinion, &c. p. 37.
[o] Opinion, &c. p. 64.

they are, that carry the antiquity of the houſe of commons no higher, than he has vainly endeavoured to carry his [p] pretended right of appeal in matters of diſcipline; and what the political *capacity*, as well as opinion, is of thoſe who *think* with them; is too plain to need any explanation: nor is it leſs plain, from his inferring

[p] That is, no higher than 1264, or the 49th year of the reign of Henry the third, ſee the opinion, &c. p. 23. And now let us hear what that great lawyer Sir Robert Atkyns ſays to this. 'There has been an opi-'nion, that hath been ſtiffly maintained by ſome di-'vines and others of late, that the houſe of commons 'originally were no part of the parliament,——but 'that their beginning was in the 49th year of Henry 'the third,——and that to balance the power of the 'barons, that king cauſed the knights, citizens and 'burgeſſes to be choſen, and to make a part of the 'parliament. And from hence, ſome unquiet innova-'ting writers, quorum res & ſpes ex adulatione pendent; 'and who would deſtroy foundations, and remove our 'ancient land-marks, and the ancient and juſt limits 'and boundaries of power and authority; ——conclude, 'that therefore all the power and privilege the houſe 'of commons claims, is not by preſcription, but that 'they depend upon the king's royal will and pleaſure, 'and had their original by his mere conceſſion, and not 'by any ancient inherent right, nor original conſtitu-'tion, and *therefore* may be reſumed at his plea-'ſure.'

To ſuch as *go on theſe principles at this day*, I beg leave to recommend this whole treatiſe of Sir Robert, *on the power, juriſdiction, and privilege of parliament*, in oppoſition to theſe new and upſtart opinions, as he very properly calls them.

inferring, that the houſe of commons itſelf might take umbrage at theſe *inquiries* into that right, merely becauſe he had preſumed to make it coeval with the riſe of that auguſt houſe, that good reaſoning is as little to be expected from thoſe *capacities*, which are *politically*, as from thoſe which are *naturally*, *bad*. As to the *inquirer*, he frankly confeſſes, that his *political capacity is ſuch*, that he has always *carried*, with Selden, with Spelman, with Petit, with Atkyns, with Tyrrell, *the riſe of that great part of our conſtitution* much *higher*, than it is carried by the Heylins, the Filmers, the Bradys of the laſt age, or by the ——'s of this; and he is even ſanguine enough to believe, that much the greater part of the univerſity concur with him in this point at leaſt.

But laſtly, *what peculiar circumſtances of offence have ſo inflamed the guilt of the ſcholars of this land, that they, of all his majeſty's good ſubjects, ſhould deſerve to be the only ſlaves in it* [q]. It ſeems then, that the *ſcholars of this land*, (all of whom one would think from this paragraph were members of an univerſity,) are rendered *ſlaves*,

[q] Opinion, &c. p. 65.

ſlaves, the moment they are not permitted to appeal, in matters of diſcipline, from their ſupreme magiſtrate to one another. Conſequently, every member of the univerſity of Oxford is *a ſlave*; for no appeal in ſuch caſes is permitted there. All the members of this univerſity muſt alſo be eſteemed *ſlaves* for the ſame reaſon; nay, what is ſtill more extraordinary, their *ſlavery* muſt be deemed to ariſe from this very *peculiar circumſtance*, that they, of almoſt *all his majeſty's good ſubjects*, have an immediate right of appeal to *himſelf*.

But 'tis high time to take my final leave of this *weak and ſhallow pedant, whoſe vanity has done him an ill turn, and thruſt him unadviſedly on a weighty office, which he had no warrant, as he had no abilities, to diſcharge* [r]. The former *inquiry* concluded with what he is pleaſed to call, *the mumpings of a little doting regiſtrary a century or two ago* [s]; and to ſhew

[r] Opinion, &c. p. 5.

[s] Opinion, &c. p. 44. And yet every man, who is the leaſt converſant in the records of the univerſity, muſt own him to have been one of the ableſt and moſt exact officers we ever had. The preſent maſter of Jeſus college, whoſe judgment (tho' head of a houſe) will ſcarce

ſhew him, what would even lately have been thought of *him* and *his claim of appeals* in matters of diſcipline, which however, as *he dares be confident* [t], he has preſumed to make ONLY *as ancient as the conſtitution of the Engliſh government itſelf* [u]; I ſhall conclude *this*, with what he may juſt as well call, *the mumpings of a little doting librarian of yeſterday.*

'THIS power of ſuſpending from de-
'grees, (ſays Dr. Middleton) is clearly
'and undoubtedly given by our ſtatutes
'to our chief magiſtrate. —— yet the
'author, —— out of ignorance or ma-
'lice, treats the exerciſe of this power,
'as an encroachment and [w] uſurpation:
'but, for all his childiſh declaiming a-
'gainſt the dangerous influence and
'effects of an authority ſo abſolute, our
'vice-chancellors have been in calm and
'quiet poſſeſſion of it ever ſince our
'ſtatutes were given us, without raiſing
'the leaſt terror or jealouſy in the body,
'that

ſcarce be queſtioned, thought it but juſtice to enter this teſtimony of him in his own book; viz. *Tabor was a man of worth and ſkill in his buſineſs.*

[t] Opinion, &c. p. 61.

[u] Opinion, &c. p. 64.

[w] Opinion, &c. p. 40.

'that their liberties or properties were 'endangered by it: this very inſtance 'we are ſpeaking of ſufficiently ſhews, 'how uſeful and neceſſary it is to curb 'the inſolence of ſuch amongſt us, who 'make no ſcruple to trample upon pri-'vileges which they are ſolemnly en-'gaged to defend, and [x] inſult an au-'thority which they have ſworn to o-'bey.

'As to the hardſhip complained of, 'that he was denied the right of an ap-'peal from this ſentence, it would hardly 'deſerve any notice, but that it has 'been inſiſted on, as an inſtance of the 'violence and injuſtice of the vice-chan-'cellor: *every body, who is acquainted with 'our conſtitution, muſt know, that there 'could not be the leaſt ground for an ap-'peal upon this occaſion:* there is indeed 'one allowed by our ſtatutes, *in every*

[x] The reader will pleaſe to obſerve, that tho' the perſon, whoſe caſe gave riſe to this controverſy, was ſuſpended by the vice-chancellor, only till ſuch time as he ſhould make ſubmiſſion for his contemptuous behaviour in open court; and tho' every court of record is by the law of the land entruſted with the final judgment of what ſhall be a contempt of their authority; yet the *editor of the opinion* has undertaken to prove, that the vice-chancellor neither is nor ought to be ſo entruſted, tho' his alſo be a court of record.

'*civil action between two parties tried* '*before the vice-chancellor* (for the Dr. 'could *reverence quotations drawn from* '*heathen writers*, and yet tranſlate [y] *cauſa* '*forenſis* right); but what has this to do 'with a caſe of contempt cenſured by 'his authority [z] ?'

[y] See above p. 28.

[z] See a full and impartial account of all the late proceedings in the univerſity of Cambridge againſt Dr. Bentley.

F I N I S.

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